

Federal Register

Wednesday
May 12, 1999

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FEDERAL REGISTER WORKSHOP

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- 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 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:** May 18, 1999 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



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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV99-989-2 FIR]

Raisins Produced From Grapes Grown in California; Increase in Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate established under the Federal marketing order for California raisins (order) from \$5.00 to \$8.50 per ton for raisins acquired by handlers for the 1998-99 and subsequent crop years. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year runs from August 1 through July 31. The 1998-99 crop is smaller than initially estimated. Further, for this crop year, volume regulation has only been applied to one minor varietal type of raisin. As a result, some expenses paid by assessments have increased. The \$5.00 per ton assessment rate would not have generated enough revenue to cover expenses. The \$8.50 per ton assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit

and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, or Fax: (202) 720-5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail:

Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California raisin handlers are subject to assessments. It is intended that the assessment rate as issued herein will apply to all assessable raisins beginning August 1, 1998, the beginning of the 1998-99 crop year, and continue in effect until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or

any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to increase the assessment rate established under the order for the 1998-99 and subsequent crop years from \$5.00 to \$8.50 per ton of raisins acquired by handlers. Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998-99 crop is smaller than initially estimated. Further, for this crop year, volume regulation has been applied to only one minor varietal type of raisin. As a result, some expenses paid by assessments have increased. The \$5.00 per ton rate of assessment would not have generated enough revenue to cover expenses. This action was unanimously recommended by the Committee at a meeting on January 15, 1999.

Sections 989.79 and 989.80, respectively, of the Federal order for California raisins provide authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

An assessment rate of \$5.00 per ton for raisins acquired by handlers had been in effect under the Federal order since the 1996-97 crop year (61 FR 52684; October 8, 1996). Regarding the 1998-99 crop year, the Committee met

on August 13, 1998, and recommended administrative expenditures of \$1,655,000 for the year. Major administrative expenditures included \$545,500 for export program administration and related activities; \$478,000 for salaries; and \$100,000 for compliance activities. These expenditures were approved by the Department on August 18, 1998. At that time, the Committee estimated the crop at about 321,400 tons, and anticipated that 333,000 tons of raisins would be acquired by handlers during the 1998–99 crop year (included about 59,800 tons of 1997 reserve raisins sold to handlers for free use). The \$5.00 per ton assessment rate was expected to generate \$1,665,000 in revenue which would have allowed the Committee to meet its administrative expenses.

Section 989.79 of the order also provides authority for the Committee to formulate an annual budget of expenses likely to be incurred during the crop year in connection with reserve raisins held for the account of the Committee. A certain percentage of each year's raisin crop may be held in a reserve pool during years when volume regulation is implemented to help stabilize raisin supplies and prices. The remaining "free" percentage may be sold by handlers to any market. Reserve raisins are disposed of through various programs authorized under the order. Reserve pool expenses are deducted from proceeds obtained from the sale of reserve raisins. Net proceeds are returned to the pool's equity holders, primarily producers.

At its August 1998 meeting, the Committee recommended a 1998–99 reserve pool budget of \$2,941,500. Major pool expenses included \$1,050,000 for insurance and repair of bins for storing reserve raisins; \$545,500 for export program administration and related activities; \$462,000 for salaries; and \$235,000 for compliance activities.

Adverse crop conditions during the spring of 1998 created by the weather phenomenon known as El Nino, combined with scattered rain and a labor shortage during harvest contributed to a smaller 1998–99 raisin crop than initially anticipated. Also, reserve pools were initially established in October 1998 for five of the nine varietal types of raisins covered under the order—Natural (sun-dried) Seedless (Naturals), Zante Currants (Zantes), Dipped Seedless, Oleate and Related Seedless, and Other Seedless—when the Committee computed and announced preliminary free and reserve marketing percentages pursuant to § 989.54. In November 1998, the Committee determined that volume regulation was

not warranted for Dipped Seedless, Oleate and Related Seedless, and Other Seedless raisins.

The Committee met on January 15, 1999, to review crop conditions, its financial situation, and various marketing order programs. The Committee reduced its production estimate from 321,000 to 276,500 tons, and reduced its estimate of assessable tonnage from 333,000 to 315,000 tons. The Committee also determined that volume regulation was not warranted for Naturals and all other varietal types, but was warranted for Zantes, for the 1998–99 crop year. This is the first time in 16 years that volume regulation for Naturals was not implemented.

With a smaller 1998 crop, reduced estimate of assessable tonnage, and volume regulation only warranted for Zantes, the Committee recommended revising its administrative and reserve pool budgets. The 1998 reserve pool budget was reduced from \$2,941,500 to \$25,000 which should cover operating expenses for Zante reserve raisins. In addition, \$975,000 initially budgeted for 1998 reserve pool operating expenses were applied to the existing 1997 Natural and Zante reserve pool budgets. Included in the \$975,000 is \$683,000 which is being utilized for export program administration.

The Committee also reviewed and identified those expenses that were considered reasonable and appropriate to continue the raisin marketing order program, without a significant reserve pool. The expenses that were associated with the initial reserve pool budget were modified and adjusted as appropriate and included in the administrative budget. For example, salaries, payroll taxes, retirement contributions, insurance, rent for office space, telephone, and other administrative items are usually split between the Committee's administrative and reserve budgets. Although the 1998 crop is reduced, the Committee needs to maintain its staff to administer the order and ongoing export programs.

Many operating expenses were adjusted from the Committee's initial administrative and reserve budgets, such as for overall compliance (\$335,000 to \$200,000), overall auditing fees (\$35,000 to \$10,000), overall printing (\$20,000 to \$17,000), and overall Committee meetings (\$24,000 to \$20,000). Ultimately, the Committee recommended increasing its administrative expenses from \$1,665,000 to \$2,677,500, which included an additional \$1,012,500 in operating expenses initially associated with the 1998 reserve budget. Major expenses to be funded through handler

assessments now include \$940,000 in salaries; \$408,000 for export program administration; \$200,000 for compliance activities; \$150,000 for Committee travel; and \$140,000 for membership dues and surveys.

The Committee recommended increasing its assessment rate from \$5.00 to \$8.50 per ton of raisins acquired by handlers. The \$8.50 per ton assessment rate when applied to anticipated acquisitions of 315,000 tons will yield \$2,677,500 in assessment income which will be adequate to cover anticipated administrative expenses. Authority for the Committee to recommend an increase in the assessment rate during a crop year to obtain sufficient funds to meet expenses is provided in § 989.80(c) of the order. Any unexpended assessment funds from the crop year are required to be credited or refunded to the handlers from whom collected, as provided in § 989.81(a) of the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information. Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 revised budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about

through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining 7 handlers have sales less than \$5,000,000, excluding receipts from any other sources.

This rule continues to increase the assessment rate established under the Federal order for the 1998-99 and subsequent crop years, as specified in § 989.347, from \$5.00 to \$8.50 per ton of raisins acquired by handlers. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Committee. Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998-99 crop is smaller than initially estimated due to adverse weather conditions and a labor shortage during harvest. Further, for this crop year, volume regulation has been applied to only one minor varietal type of raisin. As a result, some expenses paid by assessments have increased. The \$5.00 per ton rate of assessment would not have generated enough revenue to cover expenses.

With a smaller crop, reduced estimate of assessable tonnage, and volume regulation only warranted for Zantes, the Committee recommended revising its administrative and reserve pool budgets. The 1998 reserve pool budget was reduced from \$2,941,500 to \$25,000 which should cover operating expenses for Zante Currant reserve raisins. In addition, \$975,000 initially budgeted for 1998 reserve pool operating expenses were applied to the existing 1997 Natural and Zante reserve pool budgets. Included in the \$975,000 is \$683,000 which is being utilized for export program administration.

The Committee also reviewed and identified those expenses that were considered reasonable and appropriate to continue the raisin marketing order program, without a significant reserve

pool. Those expenses that were associated with the initial reserve pool budget were modified and adjusted as appropriate and included in the administrative budget. For example, salaries, payroll taxes, retirement contributions, insurance, rent for office space, telephone, and other administrative items are usually split between the Committee's administrative and reserve budgets. Although the 1998 crop is reduced, the Committee needs to maintain its staff to administer the order and ongoing export programs. Many operating expenses were adjusted from the Committee's initial administrative and reserve budgets. These included adjustments for overall compliance (\$335,000 to \$200,000), overall auditing fees (\$35,000 to \$10,000), overall printing (\$20,000 to \$17,000), and overall Committee meetings (\$24,000 to \$20,000). Ultimately, the Committee recommended increasing its administrative expenses from \$1,665,000 to \$2,677,500, which included an additional \$1,012,500 in operating expenses initially associated with the 1998 reserve budget.

The \$8.50 per ton assessment rate, when applied to anticipated acquisitions of 315,000 tons, will yield \$2,677,500 in revenue and allow the Committee to meet expenses, which include \$940,000 for salaries; \$408,000 for export program administration; \$200,000 for compliance activities; \$150,000 for Committee travel; and \$140,000 for membership dues and surveys. Authority for the Committee to incur expenses, generate revenue by assessing raisin handlers, and increase the assessment rate during a crop year is provided in §§ 989.79 and 989.80 of the order, respectively.

Regarding the impact of this rule on handlers and producers, while assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. With the 1998-99 producer price for Naturals, the major raisin varietal type covered under the order, averaging \$1,290 per ton of raisins acquired, estimated assessment revenue for the 1998-99 crop year as a percentage of total producer revenue is expected to be less than 1 percent. The increased assessment rate allows the Committee to meet its expenses and continue program operations. Any unexpended assessment funds from the crop year are required to be credited or refunded to the handlers from whom collected, as provided in § 989.81(a) of the order.

The Committee considered some alternatives to the recommended action. The Committee's Audit Subcommittee formed a working group which held a meeting on December 16, 1998, to discuss revisions to the budget. The Audit Subcommittee held a follow-up meeting on January 6, 1999. Alternatives discussed at these meetings were based on the assumption that no volume regulation would be in effect for any varietal type of California raisins for the remainder of the crop year. Accordingly, one option considered was to have the 1998 administrative budget absorb all of the operating costs that are typically split between the administrative and reserve pool budgets, and increase the assessment rate to \$11.50 per ton of raisins acquired to cover these costs. However, the majority of subcommittee members determined that the increase in expenses would be funded more appropriately with 1998-99 handler assessments and proceeds from the anticipated 1998 reserve pool for Zantes, and the existing 1997 reserve pools for Naturals and Zantes, respectively.

The working group and subcommittee members also considered various scenarios regarding the itemized expenses, estimate of assessable tonnage, and necessary assessment income. Ultimately, the Committee determined that volume regulation was only warranted for Zantes, that administrative expenses should be increased to \$2,677,500, that the estimate of assessable tonnage should be reduced from 333,000 to 315,000 tons, and that the assessment rate should be increased to \$8.50 per ton of raisins acquired by handlers.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's working group meeting on December 16, 1998, subcommittee meeting on January 6, 1999, and the Committee meeting on January 15, 1999, where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal**

Register on February 24, 1999 (64 FR 9053). Copies of the rule were mailed to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended April 26, 1999. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 64 FR 9053 on February 24, 1999, is adopted as a final rule without change.

Dated: May 5, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-11977 Filed 5-11-99; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

Distance Learning and Telemedicine Loan and Grant Program; Confirmation of Effective Date, Corrections, and Correcting Amendments

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule; Confirmation of effective date, corrections, and correcting amendments.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule on the Distance Learning and Telemedicine Loan and Grant Program, published in the **Federal Register**, March 25, 1999, at 64 FR 14401 and confirms the effective date of the direct final rule. In addition, this document is making corrections and correcting amendments to this rule.

DATES: The direct final rule, which published at 64 FR 14401, and the

corrections and correcting amendments, are effective on May 10, 1999.

FOR FURTHER INFORMATION CONTACT:

Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250-1590, Telephone (202) 720-9554, Facsimile (202) 720-0810.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

This is to confirm the effective date of the direct final rule, 7 CFR Part 1703, Distance Learning and Telemedicine Loan and Grant Program, published March 25, 1999, at 64 FR 14401, and is to advise that RUS did not receive any written adverse comments and no written notice of intent to submit adverse comments on this rule.

Need for Correction

As published, the direct final rule contains errors and information that may be misleading and is in need of modification.

List of Subjects in 7 CFR Part 1703

Community development, Grants programs-education, Grant programs-health care, Grant programs-housing and community development, Loan programs-education, Loan programs-health care, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

I. Accordingly, FR Doc. 99-6995, RUS direct final rule, published on March 25, 1999, at 64 FR 14355, is corrected as follows:

§ 1703.103 [Corrected]

1. On page 14359, in the first column, in § 1703.103, paragraph (a)(3), beginning in line 10, the words "distance learning or telemedicine grant" are corrected to read "financial assistance".

§ 1703.105 [Corrected]

2. On page 14359, in the second column, in § 1703.105, paragraph (c), line 12, the word "eminent" is corrected to read "imminent".

3. On page 14359, in the third column, in § 1703.105, paragraph (e)(6), beginning with line 2, the words "DLT borrower" are corrected to read "DLT recipient" and in line 5 the word "borrower" is corrected to read "recipient".

§ 1703.108 [Corrected]

4. On page 14360, in the second column, in § 1703.108, paragraph (a), line 4, the word "preceding" is corrected to read "following".

§ 1703.123 [Corrected]

5. On page 14361, in the second column, in § 1703.123, paragraph (a)(13), line 2, "§ 1703.105" is corrected to read "§ 1703.121".

6. On page 14361, in the second column, in § 1703.123, paragraph (a)(14), line 2, "§ 1703.105" is corrected to read "§ 1703.121".

§ 1703.126 [Corrected]

7. On page 14363, in the first column, in § 1703.126, paragraph (a), line 7, "paragraph (a)(2)" is corrected to read "paragraph (b)(2)(iv)".

§ 1703.127 [Corrected]

8. On page 14365, in the first column, in § 1703.127, paragraph (c)(1), line 4, "§ 1703.115(e)(1)" is corrected to read "§ 1703.125(e)(1)".

9. On page 14365, in the second column, in § 1703.127, paragraph (c)(3), beginning in line 4, the words "in accordance of § 1703.125(e)." are corrected to read "in accordance with § 1703.125(e).".

§ 1703.134 [Corrected]

10. On page 14368, in the second column, in § 1703.134, paragraph (l), beginning in line 2, the words "any additional RUS may" are corrected to read "any additional information RUS may".

§ 1703.144 [Corrected]

11. On page 14371, in the first column, in § 1703.144, paragraph (c)(4), beginning in line 2, the words "for both the combination loan and grant and" are corrected to read "for the loan and".

12. On page 14371, in the second column, in § 1703.144, paragraph (d)(2), line 9, remove the word "for".

13. On page 14371, in the second column, in § 1703.144, paragraph (d)(3), the second sentence is corrected to read "Those assets for which a loan is being requested should be clearly indicated."

14. On page 14371, in the third column, in § 1703.144, paragraph (f)(2), beginning in line 16, the words "fund using a combination loan and grant." are corrected to read "fund using a loan."

15. On page 14371, in the third column, in § 1703.144, paragraph (f)(4), line 4, "§ 1703.131(h)." is corrected to read "§ 1703.141(h).".

§ 1703.145 [Corrected]

16. On page 14372, in the second column, in § 1703.145, paragraph (b), beginning in line 12, the words "total loan and grant funding available for the fiscal year." are corrected to read "total loan funding available for the fiscal year."

II. Title 7 CFR part 1703 is corrected by making the following correcting amendments:

PART 1703—RURAL DEVELOPMENT

17. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

18. § 1703.123 is amended by revising paragraph (a)(5) to read as follows:

§ 1703.123 Nonapproval purposes for grants.

(a) * * *

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider unless that service provider is the applicant.

* * * * *

19. § 1703.125 is amended by adding paragraph (b)(9) and by revising paragraphs (i)(1) through (i)(7) and by removing paragraphs (i)(8) through (i)(11) to read as follows:

§ 1703.125 Completed application.

* * * * *

(b) * * *

(9) A listing of the location of each end user site (city, town, village, borough, or rural areas) plus the State.

* * * * *

(i) * * *

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(6) E.O.s 12549 and 12689, Debarment and Suspension;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

* * * * *

20. § 1703.134 is amended by revising paragraphs (g)(1) through (g)(7) by removing paragraphs (g)(8) through (g)(11) to read as follows:

§ 1703.134 Completed application.

* * * * *

(g) * * *

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(6) E.O.s 12549 and 12689, Debarment and Suspension;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

* * * * *

21. § 1703.140 is amended by revising the first sentence of the introductory paragraph to read as follows:

§ 1703.140 Completed application.

A loan may be used by eligible organizations as defined in § 1703.103 for distance learning and telemedicine projects to finance 100 percent of the cost of approved purposes contained in § 1703.141 provided that no financial assistance may exceed the maximum amount for the year in which the loan is made. * * *

* * * * *

22. § 1703.141 is amended by revising the first sentence of paragraph (i) to read as follows:

§ 1703.141 Approved purposes for loans.

* * * * *

(i) Any project costs, except for salaries and administrative expenses, not included in paragraphs (a) through (h) of this section, incurred during the first two years of operation after the financial assistance has been approved.

* * * * *

* * * * *

23. § 1703.142 is amended by revising paragraphs (a) and (b)(4), and by adding paragraph (b)(5) to read as follows:

§ 1703.142 Nonapproved purposes for loan.

(a) Loans made under this subpart will not be provided to pay the costs of recurring or operating expenses incurred after two years from approval of the project except for leases (see § 1703.141).

(b) * * *

(4) To pay for salaries, wages, or administrative expenses; or

(5) For any purpose that the Administrator has not specifically approved.

* * * * *

24. § 1703.144 is amended by revising paragraphs (g)(1) through (g)(7) and by removing paragraphs (g)(8) through (g)(10) to read as follows:

§ 1703.144 Completed application.

* * * * *

(g) * * *

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(6) E.O.s 12549 and 12689, Debarment and Suspension;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

* * * * *

Dated: May 6, 1999.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 99-11855 Filed 5-11-99; 8:45 am]

BILLING CODE 3410-15-P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 620

RIN 3052-AB79

Organization; Disclosure to Shareholders; FCS Board Compensation Limits; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 611 and 620 on April 6, 1999 (64 FR 16617). The final rule amends the regulations Farm Credit System (FCS) bank director compensation. The amendment removes the requirement for FCS banks to obtain our prior approval before paying their directors more than the generally applicable limit. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 11, 1999.

EFFECTIVE DATE: The regulation amending 12 CFR parts 611 and 620 published on April 6, 1999 (64 FR 16617) is effective May 11, 1999.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4479;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 6, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99-11896 Filed 5-11-99; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 99-NM-68-AD; Amendment 39-11165; AD 99-10-12]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-100, -200, -300, -400, and -500 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 737-100, -200, -300, -400, and -500 series airplanes, that currently requires repetitive inspections to detect cracking, plating degradation, and corrosion of the main landing gear (MLG) actuator beam arms and actuator beam attach bolts; and rework or replacement, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections. This amendment removes the requirement to inspect the actuator beam attach bolts, expands the applicability of the existing AD to include additional airplanes, and removes the optional terminating action. This amendment is prompted by reports of cracked MLG actuator beam arms. The actions specified in this AD are intended to detect and correct corrosion and cracking of the MLG actuator beam arm, which could result in damage to the control cables for the aileron and spoiler and consequent reduced controllability of the airplane.

DATES: Effective May 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-68-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: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1153; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: On February 13, 1991, the FAA issued AD 91-05-16, amendment 39-6913 (56 FR 7561, February 25, 1991), applicable to certain Boeing Model 737-100, -200, -300, -400, and -500 series airplanes. That AD requires repetitive visual and ultrasonic inspections of the main landing gear (MLG) actuator beam arms and actuator beam attach bolts for cracking, plating degradation, and corrosion; and rework or replacement, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections. That action was prompted by reports of failure of the actuator beam arm and trunnion pin due to corrosion. The actions required by that AD are intended to prevent structural damage and severing of control cables and hydraulic tubing in this area, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received reports of cracking of an actuator beam arm on the MLG on three Boeing Model 737-300 series airplanes. Two operators reported damage to the landing gear, wing structure, fluid lines, and aileron and spoiler control cables; the damage has been attributed to fractures of the MLG actuator beam arm. One of those operators subsequently conducted a fleet-wide inspection and found a cracked actuator beam arm on another airplane. The beam arm fractures originated from corrosion pits in the actuator beam arm clevis. All three fractured actuator beam arms had been reworked in accordance with AD 91-05-16. In one case, the fracture occurred 7 years (at approximately 13,500 flight cycles) after completion of the terminating action in compliance with that AD.

FAA's Conclusions

The FAA has determined that rework or replacement of the actuator beam arm, which AD 91-05-16 provides as either optional corrective action or optional terminating action for the repetitive inspections, does not

adequately prevent corrosion and subsequent cracking of the clevis area. Therefore, the FAA finds that, to ensure the continued safety of the fleet, it is necessary to require that repetitive inspections to detect cracks and corrosion in the actuator beam arm clevis must be performed on all affected airplanes, including those on which the rework or replacement has been accomplished. Paragraph B. of AD 91-05-16, which provided for optional terminating action for the repetitive inspections, has not been included in this AD.

In addition, AD 91-05-16 requires a one-time inspection of the actuator beam attach bolts. However, there have been no known reports of bolt fractures since the effective date of AD 91-05-16. Therefore, the FAA has determined that further inspection of those bolts is unnecessary, and the corresponding requirement of AD 91-05-16 (paragraph A.2.) has not been included in this AD. The inspection requirements of this AD are limited to the actuator beam arm clevis.

Furthermore, the FAA finds it necessary to expand the applicability of this AD to include additional airplanes. The applicability of AD 91-05-16 currently excludes in-production Model 737 series airplanes. However, the design change for incorporation on in-production airplanes can produce the same result as that of the preventive modification (rework) specified by Boeing Alert Service Bulletin 737-32A1224, Revision 1, dated April 12, 1990 which has been shown to be ineffective in preventing the unsafe condition. (That alert service bulletin is referenced as the appropriate source of service information in AD 91-05-16 for accomplishment of the rework.) Therefore, the applicability of this AD includes all Model 737-100, -200, -300, -400, and -500 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737-32A1224, Revision 2, dated April 25, 1991. The content of Revision 2 is similar to that of Revision 1, which was cited as the appropriate source of service information for accomplishment of the requirements of AD 91-05-16. Revision 2 was issued to clarify the actions and to revise the effectivity for various actions.

The FAA also has reviewed and approved Boeing Alert Service Bulletin 737-32A1314, dated April 15, 1999, which describes procedures for repetitive inspections of the clevis on certain actuator beam arm assemblies;

the inspections include a visual inspection to detect corrosion and an ultrasonic inspection to detect cracking. The alert service bulletin also describes procedures for replacement of any beam arm having a cracked or corroded clevis with a new actuator beam arm.

The note in Figure 1 of Boeing Alert Service Bulletin 737-32A1314 references Temporary Revision (TR) 04-14 to the 737 Nondestructive Test (NDT) Manual. That note states that the TR would be issued prior to May 14, 1999; in fact, the manufacturer released that TR by telegraphic release on April 26, 1999. The TR contains new information that is needed to perform ultrasonic inspections for airplanes having certain actuator beam arm assemblies. Specifically, the TR provides instructions for procuring or fabricating NDT transducers that are needed to accomplish the inspections for those certain airplanes.

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 91-05-16 to continue to require repetitive inspections to detect cracking of the actuator beam arm clevis of the MLG, and rework or replacement, if necessary. These actions are required to be accomplished in accordance with Boeing Alert Service Bulletin 737-32A1224, Revision 1, or Boeing Service Bulletin 737-32A1224, Revision 2.

This AD adds repetitive detailed visual inspections to detect corrosion and repetitive ultrasonic inspections to detect cracking of the actuator beam arm clevis; these actions terminate the repetitive inspections described in Boeing Alert Service bulletin 737-32A1224, Revision 1, or Boeing Service Bulletin 737-32A1224, Revision 2. These inspections are required to be accomplished in accordance with Boeing Alert Service Bulletin 737-32A1314.

For airplanes on which any corrosion or cracking is found during any of the newly added inspections, this AD requires replacement of the actuator beam arm with a new actuator beam arm in accordance with Boeing Alert Service Bulletin 737-32A1314.

Difference Between the Rule and the Relevant Service Information

Operators should note that Alert Service Bulletin 737-32A1314 specifies compliance in terms of either years or flight cycles. However, the threshold and repetitive interval required by paragraph (b) of this AD are specified in terms of calendar time only; i.e., 4 years

and 90 days, respectively. The unsafe condition identified by this AD is caused by corrosion, which is a function of time rather than accumulated flight cycles.

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 99-NM-68AD." 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 39-6913 (56 FR 7561, February 25, 1991), and by adding a new airworthiness directive (AD), amendment 39-11165, to read as follows:

99-10-12 Boeing: Amendment 39-11165. Docket 99-NM-68-AD. Supersedes AD 91-05-16, Amendment 39-6913.

Applicability: All Model 737-100, -200, -300, -400, and -500 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 (d) 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 corrosion and cracking of the actuator beam arm of the main landing gear (MLG), which could result in damage to the control cables of the aileron and spoiler and consequent reduced controllability of the airplane, accomplish the following:

Restatement of the Requirements of AD 91-05-16, Amendment 39-6913

(a) For airplanes listed in Boeing Alert Service Bulletin 737-32A1224, Revision 1, dated April 12, 1990: Prior to the accumulation of 10,000 landings or 4 years of service, after new or overhauled MLG installation, whichever occurs first, or within the next 600 landings after April 1, 1991 (the effective date of AD 91-05-16, amendment 39-6913), whichever occurs later, perform visual and ultrasonic inspections of the actuator beam arm clevis for evidence of cracking, in accordance with Boeing Alert Service Bulletin 737-32A1224, Revision 1, dated April 12, 1990, or Revision 2, dated April 25, 1991.

(1) If cracks are found, prior to further flight, remove and rework, or replace, the actuator beam arm in accordance with the service bulletin.

(2) If no cracks are found, repeat the ultrasonic inspections in accordance with the service bulletin, at intervals not to exceed 600 landings, until the initial inspection required by paragraph (b) of this AD has been accomplished.

New Requirements of this AD

(b) Inspect the actuator beam arm clevis, by performing a detailed visual inspection to detect corrosion and an ultrasonic inspection to detect cracking, at the latest of the times specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD; in accordance with Boeing Alert Service Bulletin 737-32A1314, dated April 15, 1999. Accomplishment of these inspections constitutes terminating action for the requirements of paragraph (a) of this AD. Repeat the inspections specified by paragraph (b) of this AD thereafter at intervals not to exceed 90 days.

(1) Inspect within 4 years since date of manufacture or installation of new landing gear.

(2) Inspect within 4 years since the most recent landing gear overhaul.

(3) Inspect within 4 years since accomplishment of the replacement of the actuator beam arm clevis performed in accordance with the alert service bulletin, or

the rework performed in accordance with Boeing Alert Service Bulletin 737-32A1224, Revision 1, dated April 12, 1990, or Boeing Service Bulletin 737-32A1224, Revision 2, dated April 25, 1991.

(4) Inspect within 90 days after the effective date of this AD.

Note 2: The **Note** in Figure 1 of Boeing Alert Service Bulletin 737-32A1314 contains a reference to Temporary Revision (TR) 04-14 to the 737 Nondestructive Test Manual (NDT). The TR was issued April 26, 1999, by telegraphic release. The TR provides instructions for procuring or fabricating NDT transducers needed to accomplish ultrasonic inspections on airplanes having certain actuator beam arm assemblies. Incorporation of the TR into the general revisions of the NDT is acceptable, provided that the information contained in the general revisions is identical to that specified in the TR.

Corrective Actions

(c) If any corrosion or cracking is detected during any inspection required by paragraph (b) of this AD, prior to further flight, replace the actuator beam arm with a new actuator beam arm in accordance with Boeing Alert Service Bulletin 737-32A1314, dated April 15, 1999. Repeat the inspections required by paragraph (b) of this AD within 4 years after accomplishment of the replacement, and thereafter at intervals not to exceed 90 days.

Alternative Methods of Compliance

(d) 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 Aircraft Certification Office (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 Seattle ACO.

Special Flight Permits

(e) 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.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 737-32A1224, Revision 1, dated April 12, 1990; Boeing Service Bulletin 737-32A1224, Revision 2, dated April 25, 1991; or Boeing Alert Service Bulletin 737-32A1314, dated April 15, 1999; as applicable. 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.

(g) This amendment becomes effective on May 27, 1999.

Issued in Renton, Washington, on May 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-11784 Filed 5-11-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-97-AD; Amendment 39-11166; AD 99-10-13]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-300, -400, -500, -600, -700, and -800 Series Airplanes Equipped with Vickers Combined Stabilizer Trim Motors

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 737 series airplanes. This action requires repetitive inspections and functional tests of a trailing edge flap limit switch to verify proper operation, and replacement of the existing limit switch with a new limit switch, if necessary. This AD also requires modification of the stabilizer control system, which constitutes terminating action for the repetitive inspections and tests. This amendment is prompted by reports of uncommanded stabilizer trim motion due to failure of the trailing edge flap limit switch. The actions specified in this AD are intended to prevent such failure, which could result in uncommanded (nose down) stabilizer trim motion and consequent reduced controllability of the airplane.

DATES: Effective May 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-97-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: R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1118; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of several incidents of uncommanded nose down stabilizer trim motion on certain Boeing Model 737 series airplanes having Vickers type combined manual-autopilot stabilizer trim motors (STM). Investigation revealed the cause as a single point failure in the stabilizer control system, in conjunction with a design deficiency in the STM. Analysis of the S245 trailing edge flap limit switch of the stabilizer control system revealed that the switch had failed due to moisture penetration into the switch contacts, resulting in corrosion and an electrical short circuit. This short circuit caused an erroneously energized STM and subsequent uncommanded stabilizer trim motion in the airplane nose down direction. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 737-27A1227 (for Model 737-300, -400, and -500 series airplanes) and 737-27A1228 (for Model 737-600, -700, and -800 series airplanes), both dated April 8, 1999, which describe procedures for repetitive inspections and functional tests of the S245 trailing edge flap limit switch to verify proper operation, and replacement of any malfunctioning limit switch with a new limit switch.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of the S245 trailing edge flap limit switch, and subsequent uncommanded (nose down) stabilizer trim motion, which could result in

reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletins described previously. This AD also requires that operators submit a report of findings of malfunctioning to the FAA.

Additionally, this AD requires modification of the stabilizer control system, which constitutes terminating action for the repetitive inspections and tests required by this AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between This AD and Alert Service Bulletins

Operators should note that, although the alert service bulletins do not specify procedures for terminating action for the repetitive inspections and tests, this AD mandates, within 3 months, incorporation of an improved design of the stabilizer control system as terminating action for the repetitive inspections and tests.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections and tests. Long-term inspections and tests may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. Incorporation of an improved design of the stabilizer control system requirement is in consonance with these conditions.

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 99-NM-97-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:

99-10-13 Boeing: Amendment 39-11166. Docket 99-NM-97-AD.

Applicability: Model 737-300, -400, -500, -600, -700, and -800 series airplanes, certificated in any category; equipped with Vickers combined stabilizer trim motors.

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 (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 prevent failure of the trailing edge flap limit switch, which could result in uncommanded (nose down) stabilizer trim motion and reduced controllability of the airplane, accomplish the following:

Inspections and Tests

(a) Perform a special detailed inspection and functional test to verify proper operation of the S245 trailing edge flap limit switch, in accordance with the applicable Boeing Alert Service Bulletin 737-27A1227 (for Model 737-300, -400, and -500 series airplanes) or 737-27A1228 (for Model 737-600, -700, and -800 series airplanes), both dated April 8, 1999; as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have accumulated less than 1,000 total flight hours as of the effective date of this AD: Inspect and test prior to the accumulation of 1,000 total flight hours, or within 10 days after the effective date of this AD, whichever occurs later.

Repeat the inspection and test thereafter at intervals not to exceed 300 flight hours, until accomplishment of paragraph (c) of this AD.

(2) For airplanes that have accumulated 1,000 or more total flight hours as of the effective date of this AD: Inspect and test within 5 days after the effective date of this AD. Repeat the inspection and test thereafter at intervals not to exceed 300 flight hours, until accomplishment of paragraph (c) of this AD.

Note 2: Any inspection and test of the S245 trailing edge flap limit switch accomplished prior to the effective date of this AD in accordance with the Accomplishment Instructions of either Boeing Alert Service Bulletin 737-27A1227 (for Model 737-300, -400, and -500 series airplanes) or 737-27A1228 (for Model 737-600, -700, and -800 series airplanes), both dated April 8, 1999, as applicable, is considered acceptable for compliance with the initial inspection and test specified in paragraph (a) of this AD.

Corrective Action

(b) If any malfunction is detected during any inspection and test required by paragraph (a) of this AD, prior to further flight, replace the existing limit switch with a new limit switch in accordance with the Boeing Alert Service Bulletin 737-27A1227 (for Model 737-300, -400, and -500 series airplanes) or 737-27A1228 (for Model 737-600, -700, and -800 series airplanes), both dated April 8, 1999, as applicable. Repeat the inspection and test thereafter at intervals not to exceed 300 flight hours, until accomplishment of paragraph (c) of this AD.

(c) Within 3 months after the effective date of this AD: Incorporate an improved design of the stabilizer control system in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Incorporation of an improved design, as required by this paragraph, constitutes terminating action for the repetitive inspection and test requirements of this AD.

Reporting Requirement

(d) Within 10 days after accomplishing the inspection and test required by paragraph (a) of this AD, submit a report of the inspection and test results (positive findings of malfunctioning only) to the Manager, Seattle ACO, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. The report must include the inspection results, the airplane serial number, and the total number of landings and flight hours on the airplane. 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.

Alternative Methods of Compliance

(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 Seattle ACO.

Special Flight Permits

(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.

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737-27A1227, dated April 8, 1999; or Boeing Alert Service Bulletin 737-27A1228, dated April 8, 1999; as applicable. 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 May 27, 1999.

Issued in Renton, Washington, on May 4, 1999.

D.L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-11783 Filed 5-11-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 178**

[Docket No. 98F-0797]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to expand the safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer for propylene polymers and copolymers intended for use in contact with food. This action is in response to a petition filed by Ciba Specialty Chemicals Corp.

DATES: The regulation is effective May 12, 1999. Submit written objections and requests for a hearing by June 11, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 24, 1998 (63 FR 51074), FDA announced that a food additive petition (FAP 8B4625) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591-9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food. Upon further review, FDA has determined that the petition proposed to expand the safe use of this additive for use in polypropylene polymers and copolymers only.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive as an antioxidant and/or stabilizer in olefin polymers intended for use in contact with food is safe, and (2) the additive will have the intended technical effect. Therefore, the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this rule as announced in the notice of filing for the petition. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before June 11, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall

include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b), in the entry for 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene by revising entry "2" under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
<p style="text-align: center;">* * *</p> <p>5,7-Bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with <i>o</i>-xylene (CAS Reg. No. 181314-48-7).</p> <p style="text-align: center;">* * *</p>	<p style="text-align: center;">* * *</p> <p>For use only:</p> <p>2. At levels not to exceed 0.02 percent by weight of:</p> <p>(a) Propylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 3.1a, 3.2a, 3.2b, 3.4, or 3.5. The finished polymer may only be used in contact with food of types identified in § 176.170(c) of this chapter, Table 1, under Categories III, IV-A, V, VI-C, VII-A, and IX, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter; or</p> <p>(b) Ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, or 3.6 (where the density of each of these polymers is at least 0.94 gram per cubic centimeter), or 5. The finished polymers may only be used in contact with food of the types identified in § 176.170(c) of this chapter, Table 1, under Categories III, IV-A, V, VI-C, VII-A, and IX, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter; provided that the finished food-contact articles have a volume of at least 18.9 liters (5 gallons).</p> <p style="text-align: center;">* * *</p>

Dated: May 3, 1999.
L. Robert Lake,
Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.
 [FR Doc. 99-11899 Filed 5-11-99; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF STATE

22 CFR Part 171
 [Public Notice 3053]

Access to Information—Executive Order 12958, “Classified National Security Information,” Provisions

AGENCY: Department of State.
ACTION: Final rule.

SUMMARY: The Department of State is amending its regulations on classified national security information. The rule describes how members of the public, government employees or agencies may obtain access to information in Department of State classified records and how such requests are processed. The rule also explains the appeals process available to requestors in the event a request for the declassification of information in Department of State classified records is denied.

EFFECTIVE DATE: May 12, 1999.
FOR FURTHER INFORMATION CONTACT: Questions regarding mandatory declassification review or other aspects of Executive Order 12958 may be addressed to Margaret P. Grafeld, Director, Office of IRM Programs and Services, Room 1239, Department of

State, 2201 C Street, NW, Washington, DC 20520-1239. Telephone: 292/647-6620; FAX: 202/647-5159.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in 61 FR 148 July 31, 1996 p. 39927 inviting interested persons to submit comment concerning the proposed regulations implementing Executive Order 12958 of April 17, 1995. Executive Order 12958 prescribes a uniform system for classifying, safeguarding, and declassifying national security information. No comments were received. Section 5.6 (C) (2) of Executive Order 12958 requires agencies that originate or handle classified information to publish in the **Federal Register** implementing regulations that affect members of the public. Accordingly, the Department of State is revising 22 CFR, part 171 subpart C, §§ 171.20 through 171.26 to bring these rules into conformity with Executive Order 12958. Covered under this revision are definitions, access to records, processing requests and appeals. The rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, the rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. The rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Appeals procedures, Classified information, Conflict of interests, Confidential business information, Freedom of Information, Privacy.

In consideration of the foregoing, amend 22 CFR part 171 as follows:

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for Part 171 continues to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*; the Ethics in Government Act, 5 U.S.C. App.201; Executive Order 12958, 60 FR 19825; and Executive Order 12600, 52 FR 23781.

2. Subpart C, §§ 171.20 through 171.26, is revised to read as follows:

Subpart C—Executive Order 12958 Provisions

- 171.20 Definitions.
- 171.21 Access to records.
- 171.22 Determination in disputed cases.
- 171.23 Challenges to classification.
- 171.24 Access by historical researchers and former Presidential appointees.
- 171.25 Exemptions.

Subpart C—Executive Order 12958 Provisions

§ 171.20 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *National security* means the national defense or foreign relations of the United States.

(b) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(c) *Control* means the authority of the agency that originated the information, or its successor in function, to regulate access to the information.

(d) *Classified national security information* (hereafter classified information) means information that has been determined pursuant to this Executive Order 12958 or any predecessor Order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(e) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as "foreign government information" under the terms of a predecessor Order.

(f) *Classification* means the act or process by which information is determined to be classified information.

(g) *Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

(h) *Original classification authority* means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(i) *Unauthorized disclosure* means a communication or physical transfer of classified information to an unauthorized recipient.

(j) *Agency* means any "executive agency" as defined in 5 U.S.C. 105, and any other entity within the executive branch that comes into the possession of classified information.

(k) *Senior agency official* means the official designated by the agency head under section 5.6(C) of this Executive Order 12958 to direct and administer the agency's program under which information is classified, safeguarded, and declassified.

(l) *Confidential source* means any individual or organization that has provided, or that may reasonably be expected to provide information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(m) *Damage to the national security* means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value and utility of that information.

(n) *Presidential appointees* includes former officials of the Department of State or other U.S. Government agencies who held policy positions and were appointed by the President, by and with the advice and consent of the Senate, at the level of Ambassador, Assistant Secretary of State or above. It does not include Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

§ 171.21 Access to records.

(a) Request for mandatory classification review. For a request for classified records to be processed under section 3.6 of E.O. 12958, it must describe the record(s) with sufficient specificity to enable the agency to locate the record(s) with a reasonable amount of effort. Whenever a request does not reasonably describe the record(s), the Department shall notify the requester that no further action will be taken unless additional information is provided, or the scope of the request is narrowed.

(b) Mandatory review. A request for declassification under the Executive Order 12958 is termed a mandatory review; it is separate from and different than a request made under the Freedom of Information Act (FOIA). When a requester submits a request under both mandatory review and FOIA, the Department shall require the requester to elect one or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the materials requested are subject only to mandatory review.

(c) Scope. All information classified under this or predecessor orders shall be subject to declassification review upon

request by a member of the public, a government employee or agency, with the following exceptions:

(1) Information exempted from search and review under the Central Intelligence Information Act;

(2) Information which is the subject of pending litigation;

(3) Information which has been reviewed and withheld within the past two years;

(4) Information originated by the incumbent President; the incumbent President's White House staff; committees, commissions or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President. If the information requested is the subject of pending litigation, or has been reviewed for declassification and withheld within the past two years, the Department will inform the requester of these facts and of the requester's appeal rights. The Archivist of the United States shall establish procedures for the declassification of Presidential or White House materials accessioned into the National Archives or maintained in the Presidential libraries.

(d) The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified.

(e) Processing. In responding to mandatory review requests, the Department shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. The Department shall ordinarily make a final determination within 180 days from the date of receipt. When information cannot be declassified in its entirety, the Department will make reasonable efforts to release those declassified portions of the requested information that constitute a coherent segment.

(f) Other agency records. When the Department receives a request for records in its possession that were originated by another agency, it shall refer the request and the pertinent records to the originating agency unless that agency has agreed that the Department may review the records in accordance with declassification guides or guidelines provided by the originating agency. The originating agency shall communicate its declassification determination to the Department.

(g) Foreign government information. When foreign government information is being considered for declassification, the declassifying agency is the agency

that originally received or classified the information. The declassifying agency shall:

- (1) Determine whether the information is subject to a treaty or international agreement that would prevent its declassification;
- (2) Determine whether the information is subject to section 1.6(d)(5), (6) or (8) of the Executive Order 12958;
- (3) Consult with any other concerned agencies;
- (4) Consult with the Department and/or the foreign government, as appropriate.

(h) Cryptologic and intelligence information. Mandatory declassification review requests for cryptologic information and information concerning intelligence activities or intelligence sources or methods shall be processed solely in accordance with special procedures established by the Secretary of Defense and the Director of Central Intelligence, respectively.

(i) Appeals. Upon denial of an initial request in whole or in part, the Department shall notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial. The Department shall normally make a determination within 60 days following receipt of an appeal. If additional time is needed to make a determination, the Department shall notify the requester of the additional time needed and provide the requester with a reason for extension. The Department shall notify the requester in writing of the final determination and of the reasons for any denial.

(j) Appeals to the Interagency Security Classification Appeals Panel. The Interagency Security Classification Appeals Panel shall publish in the **Federal Register** the rules and procedures for bringing mandatory declassification appeals before it.

§ 171.22 Determination in disputed cases.

(a) It is presumed that information that continues to meet the classification requirements under this Executive Order 12958 requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the Secretary of State or the Department's senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that

might reasonably be expected from disclosure.

(b) This provision does not:

- (1) Amplify or modify the substantive criteria or procedures for classification; or
- (2) Create any substantive or procedural rights subject to judicial review.

§ 171.23 Challenges to classification.

(a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information. An authorized holder is any individual, including an individual external to the Department, who has been granted access to specific classified information in accordance with section 4.2(g) of the Executive Order 12958.

(b) Challenges shall be presented to an original classification authority with jurisdiction over the information. A formal challenge under section 1.9 of the Executive Order 12958 must be in writing, but need not be any more specific than to question why information is or is not classified, or is classified at a certain level. The classification challenge provision is not intended to prevent an authorized holder from informally questioning the classification status of particular information. Such informal inquiries are encouraged in order to limit the number of formal challenges.

(c) Whenever the Department receives a classification challenge to information that has been the subject of a challenge within the past two years, or that is the subject of pending litigation, it is not required to process the challenge beyond informing the challenger of this fact and of the challenger's appeal rights, if any.

(d) Challenges, responses and appeals shall, if possible, be unclassified. However, classified information contained in a challenge, a response from the department or an appeal shall be handled and protected in accordance with this Executive Order 12958 and its implementing directives.

(e) Information being challenged for classification shall remain classified unless and until a decision is made to declassify it.

(f) The Secretary of State or the senior agency official of the Department shall establish procedures under which authorized holders of classified information may make such challenges. These procedures shall assure that:

- (1) No retribution is taken against an authorized holder bringing a challenge in good faith;

(2) An opportunity is provided for review by an impartial official or panel; and

(3) Classification challenges shall be considered separately from FOIA or other access requests.

(g) Processing an initial written response to a challenge shall be provided within 60 days. If the Department is unable to respond to the challenge within 60 days, it must acknowledge the challenge in writing and provide a date by which it will respond. The Department's acknowledgement must state that if no response is received within 120 days, the challenger has the right to forward the challenge to the Interagency Security Classification Appeals Panel. The challenger may also forward the challenge to the Interagency Security Classification Appeals Panel if the Department has not responded to an internal appeal within 90 days after receiving the appeal. Responses to challenges denied by the Department shall also include the challenger's appeal rights to the Interagency Security Classification Appeals Panel.

§ 171.24 Access by historical researchers and former Presidential appointees.

(a) Section 4.2(a)(3) of this Executive Order 12958 restricts access to classified information to individuals who have a need-to-know the information. This may be waived for persons who are engaged in historical research projects or previously occupied policy-making positions to which they were appointed by the President. Access requests made under this provision must be submitted in writing and must include a general description of the records and the time period covered by the request.

(b) Access may be granted only if the Secretary of State or the senior agency official of the Department:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise; and

(3) Ensures that the information is safeguarded in a manner consistent with the Executive Order 12958.

(c) Access granted to former Presidential appointees shall be limited to items the individual originated, reviewed, signed or received while serving as a Presidential appointee.

§ 171.25 Exemptions.

The Freedom of Information and Privacy Acts exemptions and any other exemptions under applicable law may be invoked by the Department to deny

material on grounds other than classification.

Date: May 5, 1999.

Patrick F. Kennedy,
Assistant Secretary, Bureau of Administration.

[FR Doc. 99-12029 Filed 5-11-99; 8:45 am]
BILLING CODE 4710-05-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose,

cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, Telephone number: (202) 685-5040

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General

(Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for USS BARRY (DDG 52) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than 1/2 ship's length aft of forward mast-head light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS BARRY	DDG 52	X	X	X	19.8

Dated: February 3, 1999.

R.R. Pixa,
Capt, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty).
[FR Doc. 99-12022 Filed 5-11-99; 8:45 am]
BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy

Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374-5066, Telephone number: (202) 685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead

lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the

placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for USS CURTIS WILBUR (DDG 54) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward mast-head light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS CURTIS WILBUR	DDG 54	X	X	X	19.6

Dated: February 3, 1999.
R.R. Pixa,
CAPT, JAGC, U.S. Navy,
Deputy Assistant Judge Advocate,
General (Admiralty).
 [FR Doc. 99-12023 Filed 5-11-99; 8:45 am]
 BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with

certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374-5066, Telephone number: (202) 685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also

certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for USS JOHN S. McCAIN (DDG 56) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward mast-head light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS JOHN S. McCAIN	DDG 56	X	X	X	19.8

Dated: February 3, 1999.

R.R. Pixa,

Capt, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty).

[FR Doc. 99-12024 Filed 5-11-99; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS O’KANE (DDG 77) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, Telephone number: (202) 685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS O’KANE (DDG 77) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii) pertaining to the vertical placement of task lights; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge

Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel’s ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS O’KANE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

	Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * *			
USS O’KANE		DDG 77	1.92 meters.
* * * * *			

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical

order, the following entry for USS O’KANE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

	Vessel	Number	Obstruction angle relative ship’s headings
* * * * *			
USS O’KANE		DDG 77	102.00 thru 112.50°.
* * * * *			

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS O’KANE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than 1/2 ship's length aft of forward mast-head light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS O'KANE	DDG 77	X	X	X	14.0

Dated: February 3, 1999.
R.R. Pixa,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).
 [FR Doc. 99-12025 Filed 5-11-99; 8:45 am]
 BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS OGDEN (LPD 5) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this

rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT:

Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, Telephone Number: (202) 685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS OGDEN (LPD 5) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special functions as a naval ship: Annex I, section 2(a)(i), pertaining to the height of the forward masthead light; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; and, Annex I, section 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are

located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table One of § 706.2 is amended by adding, in numerical order, the following entry for the USS OGDEN (LPD 5):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS OGDEN	LPD 5	4.15

3. Table Four, Paragraph 19 of § 706.2 is amended by adding, in numerical

order, the following entry for the USS OGDEN (LPD 5):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of sidelights above maximum allowed height
USS OGDEN	LPD 5	3.40

4. Table Five of § 706.2 is amended by revising the entry for the USS OGDEN (LPD 5) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward mast-head light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS OGDEN	LPD 5	N/A	N/A	X	56.6

Dated: February 3, 1999.

R.R. Pixa,
CAPT, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).
 [FR Doc. 99-12026 Filed 5-11-99; 8:45 am]
 BILLING CODE 3810-FF-P

FOR FURTHER INFORMATION CONTACT:
 Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, Washington Navy Yard, Washington, DC 20374-5066, Telephone number: (202) 685-5040.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 24, 1999.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, and Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER, and Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Obstruction angle relative ship's headings
USS PORTER	DDG 78	104.60 THRU 112.50°

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward mast-head light, annex I, sec. 3(a)	Percentage horizontal separation attained
USS PORTER	DDG 78	X	X	X	13.5

Dated: February 24, 1999.
R.R. Pixa,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty).
 [FR Doc. 99-12021 Filed 5-11-99; 8:45 am]
 BILLING CODE 3810-FF-P

DEPARTMENT OF TRANSPORTATION
Coast Guard
33 CFR Part 117
[CGD01-99-029]
Drawbridge Operation Regulations; Merrimack River, MA

AGENCY: Coast Guard, DOT.
ACTION: Notice of temporary deviation from regulations and request for comments.

SUMMARY: The Commander, First Coast Guard District has issued a temporary 90 day deviation from the existing drawbridge operation regulations governing the operation of the Newburyport US1 Bridge, mile 3.4, across the Merrimack River between Newburyport and Salsbury, Massachusetts. This deviation from the existing operating regulations is necessary in order to test an alternate drawbridge operation schedule. It is expected that scheduled bridge openings for vessels will help eliminate the traffic congestion during the summer months.

DATES: This deviation is effective from June 3, 1999 through August 31, 1999.

Comments must reach the Coast Guard on or before October 30, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts, 02110-3350. The telephone number is (617) 223-8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit comments, written data, views, or arguments, concerning this 90 day deviation from the drawbridge operation regulations. Persons submitting comments should include their names and addresses, identify this notice (CGD01-99-029) and give reasons for each comment. The Coast Guard requests that all comments and attachments be no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Persons may submit comments by writing to, Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts, 02110-3350.

Background

The Newburyport US1 Bridge, mile 3.4, across the Merrimack River has a vertical clearance of 35 feet at mean high water (MHW) and 42 feet at mean low water (MLW) in the closed position.

The current regulations listed at 33 CFR § 117.605 require the bridge to open on signal from May 1st through November 15th, from 6 a.m. to 10 p.m. At all other times the draw shall open on signal if at least one hour advance notice is given by calling the number posted at the bridge.

The bridge owner, the Massachusetts Highway Department (MHD), requested a temporary deviation from the operating regulations for the Newburyport US1 Bridge to test an alternate drawbridge operating schedule. The local towns, Newburyport and Salsbury, have asked MHD and the Coast Guard for relief from the significant vehicular traffic congestion in Newburyport and Salsbury during the summer months caused by the frequent and unscheduled opening of the bridge.

The Newburyport US1 Bridge will open on signal in accordance with the following schedule from June 3 through August 31, 1999:

- (1) Monday through Friday, from 6 a.m. to 10 p.m., the bridge shall open only at half past the hour.
- (2) Saturday and Sunday, from 11 a.m. to 3 p.m., the bridge shall open only at half past the hour and from 6 a.m. to 11 a.m. and 3 p.m. to 10 p.m., the bridge shall open on the hour and half hour.
- (3) At all other times the bridge shall open on signal after at least one hour advance notice is given by calling the number posted at the bridge.

It is expected that this action will help alleviate vehicular traffic congestion during the summer months by scheduling the bridge openings.

Mariners and vehicle operators can better plan their transits according to the published schedule of operation. Vessels that can pass under the bridge without a bridge opening may do so at any time.

This deviation from the normal operating regulations is authorized under 33 CFR 117.43.

Dated: May 4, 1999.

R.M. Larrabee,

Real Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99-11926 Filed 5-11-99; 8:45 am]

BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300854; FRL-6078-5]

RIN 2070-AB78

Halosulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of methyl-5-[[4,6-dimethoxy-2-pyrimidinyl]amino]carbonylamino-sulfonyl-3-chloro-1-*H*-pyrazole-4-carboxylate in or on almond, hulls; corn, sweet, kernel + cob with husks removed; corn, sweet, forage; corn, sweet, fodder, corn, pop, grain; corn, pop, fodder; cotton, undelinted seed; cotton, gin by-products, pistachio, nutmeat; rice, grain; rice, straw; sugarcane, cane; and tree-nuts (crop group 14), nutmeat. This regulation also reduces tolerances for corn, field, grain; corn, field, forage; corn, field, fodder; sorghum, grain, grain; sorghum, grain, forage and sorghum, grain, fodder/stover. This regulation also deletes tolerances for soybean, seed soybean, forage; soybean, hay; wheat, grain; wheat, forage; and wheat, straw. Monsanto Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 12, 1999. Objections and requests for hearings must be received by EPA on or before July 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300854], 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-300854], 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. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@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-300854]. 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: Jim Tompkins, 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. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 23, 1997 (62 FR 33864) (FRL-5722-8) and May 29, 1998 (63 FR 29401) (FRL-5791-2), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) announcing the filing of a pesticide petition (PP) for tolerance by Monsanto Company, 700 14th St., Suite 1100, Washington, DC 20005. This notice included a summary of the petition prepared by Monsanto Company, the registrant. There were no comments

received in response to the notice of filing.

The petition requested that 40 CFR 180.479 be amended by establishing tolerances for residues of the herbicide methyl 5-[[4,6-dimethoxy-2-pyrimidinyl]amino]carbonylamino-sulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate in or on sugarcane, cane at 0.05 parts per million (ppm) (PP 6F4620) (62 FR 33864); sweet corn, (kernel plus cobs with husks removed at 0.1 ppm); sweet corn, forage at 0.5 ppm; sweet corn, fodder/stover at 1.5 ppm; popcorn, grain at 0.1 ppm; popcorn, fodder/stover at 1.5 ppm (PP 6F4661) (62 FR 33864).

PP 8F4937 (63 FR 29401) proposed the establishment of tolerances for residues of methyl-5-[[4,6-dimethoxy-2-pyrimidinyl] amino]carbonylamino-sulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate in or on undelinted cotton seed and cotton gin by-products at 0.05 ppm, rice grain at 0.05 ppm, rice straw at 0.20 ppm, tree nut group (Group 14) nutmeat at 0.05 ppm and hulls at 0.20 ppm, pistachio, nutmeat at 0.05 ppm; and pistachio hulls at 0.2 ppm. The petition also proposed the establishment of tolerances for this chemical on corn, field, grain at 0.05 ppm; forage at 0.2; fodder at 0.8 ppm; sorghum, grain at 0.05 ppm, sorghum, forage at 0.05 ppm, sorghum, fodder/stover at 0.1 ppm. The petition also requested the removal of indirect or inadvertent tolerance (40 CFR 180.479(b)), in or on the following raw agricultural commodities when present therein as a result of the application of halosulfuron-methyl to growing crops, soybean, forage at 0.5 ppm, soybean, hay at 0.5 ppm, soybean, seed at 0.5 ppm, wheat, forage at 0.1 ppm, wheat, grain at 0.1 ppm and wheat, straw at 0.2 ppm.

During the course of the review the Agency determined that the commodity tree nut hulls should be revised to read almond, hulls and that a tolerance for pistachio, hulls was not necessary as this commodity is not a significant livestock feed item. EPA also determined that the residue crop field data supported the establishment of tolerances for halosulfuron-methyl on corn, sweet, kernel + cob with husks removed at 0.05 ppm; corn, sweet, forage at 0.2 ppm corn, sweet, fodder at 0.8 ppm; corn, pop, grain at 0.05 ppm; and corn, pop, fodder at 0.8 ppm. This regulation is amended to reflect these revisions.

I. Background and Statutory Findings

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."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

II. 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 halosulfuron-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylamino sulfonyl]-3-chloro-1-methyl-1H-pyrazole-4-carboxylate on sugarcane, cane at 0.05 ppm, sweet corn (kernel plus cobs with husks removed) at 0.05 ppm, sweet corn fodder/stover at 0.2 ppm, popcorn grain at 0.05 ppm and popcorn fodder/stover at 0.8 ppm, undelinted cotton seed at 0.05 ppm, cotton gin by-products at 0.05 ppm, rice, grain at 0.05 ppm, rice, straw at 0.20 ppm, tree nut group (crop group 14), nutmeat at 0.05 ppm, almond, hulls at 0.20 ppm, and pistachio, nutmeat at 0.05 ppm. The assessment will include currently established tolerances for residues of halosulfuron in or on field corn, grain at 0.05 ppm, field corn, fodder at 0.2 ppm and field corn, fodder at 0.8 ppm, sorghum, grain at 0.05 ppm, sorghum, fodder/stover at 0.05 ppm, sorghum, fodder/stover at 0.1 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 halosulfuron-methyl are discussed in this unit.

1. Acute toxicology studies place the technical-grade halosulfuron-methyl in Toxicity Category III or IV for all routes of exposure. It is not a dermal sensitizer and essentially non-irritating to the skin.

2. A 90-day feeding study in rats fed dosages of 7.4, 28.8, 116, and 497 milligrams/kilograms/day (mg/kg/day) for males and 8.9, 37.3, 147, and 640 mg/kg/day for females and resulted in a lowest observed adverse effect level (LOAEL) of 497 mg/kg/day in males and 640 mg/kg/day in females based on findings of decreased body weight gain, slight changes in several clinical chemistry parameters, and an increase in vacuolated livers and kidney tubular pigmentation, and a no observable adverse effect level (NOAEL) of 116 mg/kg/day in males and 147 mg/kg/day in females.

3. A 21-day dermal toxicity study in rats fed dosages of 0, 10, 100, or 1,000 mg/kg/day resulted in a NOAEL of 100 mg/kg/day in males and 1,000 mg/kg/day in females. The only treatment-related effect was a decrease in body weight gain of the 1,000 mg/kg/day group in males.

4. A 1-year chronic oral study in dogs fed dosages of 0, 0.25, 1.0, 10.0, and 40.0 mg/kg/day resulted in a LOAEL of 40 mg/kg/day based on decreased weight gains and changes in hematological and blood chemistry parameters in females and a NOAEL of 10 mg/kg/day for systemic toxicity.

5. A 78-week carcinogenicity study was performed on mice fed dosages of 0, 4.0, 41.1, 410.0, and 971.9 mg/kg/day (males) and 0, 5.2, 51.0, 509.1, and 1,214.6 mg/kg/day (females). Males in the 971.6 mg/kg/day group had decreased body weight gains and an increased incidence of microconcretion/mineralization in the testis and epididymis. No treatment-related effects were noted in females. Based on these results, a LOAEL of 971.9 mg/kg/day was established in males and NOAELs of 410 mg/kg/day in males and 1,214.6 mg/kg/day in females were established.

The study showed no evidence of carcinogenicity.

6. A combined chronic toxicity/carcinogenicity study in rats fed dosages of 0, 0.44, 4.4, 43.8, 108.3, and 225.2 mg/kg/day (males) and 0, 0.56, 5.6, 53.6, and 138.6 mg/kg/day (females) resulted in a LOAEL of 225.2 mg/kg/day in males and 138.6 mg/kg/day in females based on decreased body weight gains, and a NOAEL of 108.3 mg/kg/day in males and 56.3 mg/kg/day in females. The study showed no evidence of carcinogenicity.

7. A developmental toxicity study in rats fed dosages of 0, 75, 250, and 750 mg/kg/day resulted in a developmental LOAEL of 750 mg/kg/day based on decreases in mean litter size, increased number of resorptions, decreased mean fetal body weight, increases in fetal litter incidences of dilation of the lateral ventricles and other anomalies in the developmental of the fetal nervous system, and skeletal variations such as anomalies or delays in ossification in the thoracic vertebrae, sternbrae, and ribs, and a developmental NOAEL of 250 mg/kg/day. The maternal LOAEL was 750 mg/kg/day based on increased incidence of clinical observations, reduced body weight gains, and reduced food consumption and food efficiency. The maternal NOAEL was 250 mg/kg/day.

8. A developmental toxicity study in rabbits fed dosages of 0, 15, 50, and 150 mg/kg/day resulted in a developmental LOAEL of 150 mg/kg/day, based on decreased mean litter size and increases in resorptions, and post-implantation loss, and a developmental NOAEL of 50 mg/kg/day. The maternal LOAEL was 150 mg/kg/day based on reduced body weight gain, reduced food consumption and food efficiency. The maternal NOAEL was 50 mg/kg/day.

9. A dietary 2-generation reproduction study in rats fed dosages of 6.3, 50.4, and 223.2 (males) and 7.4, 58.7, and 261.4 mg/kg/day (females) through 1 breeding and 2 breedings of the offspring from the initial generation (7.4, 61.0, and 274.2 mg/kg/day for males and 8.9, 69.7, and 319.9 mg/kg/day resulted in parental toxicity at 223.2 mg/kg/day in males and 261.4 mg/kg/day in females in the form of decreased body weights, decreased body weight gains, and reduced food consumption during the pre-mating period. Very slight effects were noted in body weights of the offspring at this dose. This effect was considered to be developmental toxicity (developmental delay) rather than a reproductive effect based on general parental systemic toxicity. No effects were noted on reproductive or other developmental toxicity.

parameters. The systemic/developmental toxicity LOAEL was 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the systemic/developmental toxicity NOAEL was 50.4 mg/kg/day in males and 58.7 mg/kg/day in females. The reproductive LOAEL was greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the reproductive NOAEL was equal to or greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females.

10. Bacterial/mammalian microsomal mutagenicity assays were performed and found halosulfuron-methyl not to be mutagenic. Two mutagenicity studies were performed to test gene mutation and found to produce no chromosomal aberrations or gene mutations in cultured Chinese hamster ovary cells. An *in vivo* mouse micronucleus assay did not result in a significant increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow cells. A mutagenicity study was performed on rats and unscheduled DNA synthesis was not induced in primary rat hepatocytes.

11. In the rat metabolism study, parent compound absorption was rapid but incomplete. Excretion was relatively rapid at all doses tested with a majority of radioactivity eliminated in the urine and feces by 72 hours and appeared to be independent of dose and sex. Fecal elimination of parent was apparently the result of unabsorbed parent.

12. The toxicology studies listed below were conducted with the metabolite, 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid (3-CSA). Based on the toxicological data of the 3-CSA metabolite, EPA concluded that the metabolites have lower toxicity compared to the parent compound and that it should not be included in the tolerance expression. The residue of concern is the parent compound only.

i. A 90-day rat feeding study resulted in a LOAEL in males of >20,000 ppm and a NOAEL of 20,000 ppm (1,400 mg/kg/day). In females, the lowest effect level (LEL) is 10,000 ppm (772.8 mg/kg/day) based on decreased body weight gains and a NOAEL of 1,000 ppm (75.8 mg/kg/day).

ii. A developmental toxicity resulted in a lowest observed effect level (LOEL) for maternal toxicity of >1,000 mg/kg/day based on the absence of systemic toxicity, a NOAEL of 1,000 mg/kg/day. The developmental LOEL is >1,000 mg/kg/day and the NOAEL is 1,000 mg/kg/day.

iii. The microbial reverse gene mutation did not produce any mutagenic effect while the mammalian cell gene mutation/Chinese hamster

ovary cells did not show a clear evidence of mutagenic effect in the Chinese hamster ovary cells.

iv. The mouse micronucleus assay did not show any clastogenic or aneugenic effect.

B. Toxicological Endpoints

1. *Acute toxicity.* The acute dietary Reference Dose (RfD) of 0.5 mg/kg/day is based on the rabbit developmental NOAEL of 50 mg/kg/day and should be used for assessing acute dietary risks for the sub-populations, Females 13+ as well as Infants and Children. Although, the endpoint is developmental toxicity occurring in utero, and thus may not be suitable for use in risk assessment for Infants and Children, EPA determined that it is appropriate to use for this subpopulation (Infants and Children) because there is evidence of alteration to the development of the fetal nervous system in the developmental toxicity study in rats. Oral administration resulted in dilation of the lateral ventricles, dilation of the third ventricle, spinal cord agenesis, and adrenal agenesis at 750 mg/kg/day; and malformed brain cortex at 250 mg/kg/day in rats only. Thus, EPA determined that potential effects on functional development mandate the use of this endpoint for females of child bearing age (Females 13+) as well as for infants and children.

This endpoint is not applicable for adult males. A dose and endpoint was not identified for this subpopulation since no toxicological effects applicable to adult males and attributable to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits.

2. *Short- and intermediate-term toxicity.* No short- or intermediate-term inhalation toxicity endpoints were identified. The Agency selected a short term dermal endpoint based on the rabbit oral developmental NOAEL of 50 mg/kg/day and a 75% dermal absorption factor instead of the 21-day dermal study because:

i. There is a consistent pattern in the fetal effects (decreased mean litter size, increased number of resorptions, and increased postimplantation loss) observed in 2 species (rats and rabbits) via the oral route.

ii. The developmental effects are considered acute effects and thus are appropriate for this exposure period of concern (i.e., 1-7 days).

iii. The reproductive/fetal parameters are not evaluated in the dermal toxicity study, and thus the consequences of these effects cannot be ascertained for the dermal route of exposure.

iv. This endpoint will provide adequate protection for the subpopulation Female 13+ (i.e., pregnant workers).

Since an oral NOAEL was selected, a dermal absorption factor of 75% should be used for this dermal risk assessment. The Agency estimated a dermal absorption rate of 75% (i.e. a dermal:oral toxicity ratio of 75%) based on the results of an oral developmental toxicity study and a 21-day dermal toxicity study in the same species (rats). In the oral developmental toxicity study, the maternal NOAEL was 250 mg/kg/day and the LOAEL was 750 mg/kg/day based on decreases in body weight gains and food consumption. In the 21-day dermal toxicity study, the systemic toxicity NOAEL was 100 mg/kg/day and the LOAEL was 1,000 mg/kg/day based on decreased body weight gain in males. A ratio of the LOAELs from the oral and dermal studies, indicated an approximate dermal absorption rate of 75% (oral LOAEL of 750 mg/kg/day ÷ dermal LOAEL of 1,000 mg/kg/day x 100 = 75%). This absorption factor may overestimate dermal absorption due to sensitivity differences in toxicity between the sexes (the developmental toxicity LOAEL is in females, and the 21-day dermal toxicity LOAEL is in males).

The Agency selected the intermediate-term endpoint based on the chronic dog NOAEL of 10 mg/kg/day based on decreased body weight gains and changes in hematology and clinical chemistry parameters in females at the LOAEL of 40 mg/kg/day. At 40 mg/kg/day, decreases in body weight gain were seen during study weeks 0-13 in both sexes with the decrease being more pronounced in males (21%) than females (7%). Overall weight gain for the entire study (weeks 0-52) was not significantly affected in male dogs, but was decreased by 16% in female dogs at this dose. EPA selected this dose and endpoint for an intermediate-term risk assessment because the body weight anomalies, observed in both sexes during various phases of the study, meet the exposure period of concern (i.e., 1-week to several months). Since an oral NOAEL was selected, a dermal absorption factor of 75% should be used for this dermal risk assessment.

3. *Chronic toxicity.* EPA has established the RfD for halosulfuron-methyl at 0.1 mg/kg/day. This RfD is based on the chronic dog NOAEL of 10 mg/kg/day with decreased body weight gains and changes in clinical chemistry parameters in females at the LOAEL of 40 mg/kg/day.

4. *Carcinogenicity.* There is no evidence of carcinogenicity in the

mouse or rat. On September 23, 1993, EPA tentatively classified halosulfuron-methyl as a Group E chemical based on the lack of evidence of carcinogenicity in male and female mice and rats. On February 26, 1998, EPA classified halosulfuron-methyl as a Not Likely human carcinogen. There is an adequate mutagenicity data base that shows halosulfuron-methyl is not mutagenic.

C. Exposures and Risks

1. From food and feed uses.

Tolerances have been established (40 CFR 180.479) for the residues of methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylamino sulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as the parent equivalents, in or on a variety of raw agricultural commodities. Tolerances are established on meat by products of cattle, goats, hogs, horses, and sheep at 0.1 ppm. Risk assessments were conducted by EPA to assess dietary exposures from halosulfuron methyl as follows:

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 RfD of 0.5 mg/kg/day is based on a developmental (rabbit) NOAEL of 50 mg/kg/day and an uncertainty factor of 100. The Agency has determined that a postnatal developmental neurotoxicity study in rats is required for halosulfuron-methyl based on the following weight-of-the-evidence considerations: In the developmental toxicity study in rats, there was evidence of alterations to the development of the fetal nervous system at 750 mg/kg/day (the highest dose tested), including dilation of the lateral ventricles (16 fetuses/5 litters), dilation of the third ventricle (1/1), spinal cord agenesis (1/1), and adrenal agenesis (1/1) at the high dose; and malformed brain cortex (1/1) at 250 mg/kg/day. There was no evaluation of perfused nervous system tissues, since acute and subchronic neurotoxicity studies in rats were not required. The primary concern is the lack of information available in the data base that would allow the determination of whether functional deficits would be observed at dose levels below those which result in frank malformations of the central nervous system. Thus, Agency criteria require that a developmental neurotoxicity study be submitted.

The 10x factor for protection of infants and children (as required by

FQPA) should be removed for the following reasons: There was no indication of increased susceptibility of rats or rabbits to in utero and/or postnatal exposure to halosulfuron-methyl. In the prenatal developmental toxicity studies in rats and rabbits and the 2-generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

The requirement of a developmental neurotoxicity study in rats did not warrant application of additional safety factors because: (a) The alterations observed in the fetal nervous system occurred in only one species (in rats and not in rabbits); (b) the fetal effects which will be investigated in the required developmental neurotoxicity study were seen only at a dose of 750 mg/kg/day which is close to the limit-dose (1,000 mg/kg/day); (c) there was no evidence of clinical signs of neurotoxicity, brain weight changes, or neuropathology in the subchronic or chronic studies in rats; (d) the developmental neurotoxicity study is required only as confirmatory data to understand what the effect is at a high exposure (dose) level; and (e) exposure assessments do not indicate a concern for potential risk to infants and children based on the results of the field trial studies and the very low application rate (equivalent to 0.06 lbs. active ingredient per acre). Detectable residues are not expected in human foods.

A Dietary Exposure Evaluation Model (DEEM) analysis for halosulfuron-methyl was performed which incorporated proposed permanent tolerances for sweet corn, popcorn, tree nuts, pistachio, and rice; and the revised tolerances for field corn and grain sorghum. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989-91 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of halosulfuron-methyl in the commodity supply. This Tier 1 analysis assumed tolerance-level residues for all commodities having halosulfuron-methyl tolerances and 100% of the associated crops received halosulfuron-methyl treatment. The Theoretical Maximum Residue Concentrations (TMRCs) resulting from these assumptions should be considered a very conservative estimate of the exposure. The acute dietary TMRC for the United States (U.S.) population is 0.000304 mg/kg/day or 0.06% of the RfD; 0.000754 or 0.15 non-nursing

infants (less than 1 year old and 0.000250 or 0.05% of the RfD for females (13-19 not pregnant/not nursing (np/nn). Refinement of the estimates through the use of percent-of-crop-treated data and anticipated residues will result in lower exposure estimates. Even with these conservative assumptions, the risks from both acute dietary (food only) exposure to halosulfuron-methyl are less than 1% for all population subgroups listed in the DEEM analysis. Therefore, the risk from acute "food only" exposure is below the Agency's level of concern (i.e. $\leq 100\%$ of the acute RfD in the absence of additional safety factors, as is the case for halosulfuron-methyl).

ii. *Chronic exposure and risk.* The chronic dietary RfD of 0.1 mg/kg/day is based on the chronic dog study with a NOAEL of 10 mg/kg/day and an uncertainty factor of 100. As discussed above the 10x FQPA safety factor was removed.

A DEEM analysis for halosulfuron-methyl was performed which incorporated proposed permanent tolerances for sweet corn, popcorn, tree nuts, pistachio, and rice; revised tolerances for field corn and grain sorghum; and revoked tolerances for wheat and soybean. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989-91 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of halosulfuron-methyl in the commodity supply. This Tier 1 analysis assumed tolerance-level residues for all commodities having halosulfuron-methyl tolerances and 100% of the associated crops received halosulfuron-methyl treatment. The TMRCs resulting from these assumptions should be considered a very conservative estimate of the exposure. The chronic TMRC for the U.S. population is 0.000102 mg/kg/day or 0.1% of the RfD; 0.000158 mg/kg/day or 0.2% of the RfD for all infants (less than 1 year old); 0.000238 or 0.2% of the RfD for children (1-6); and 0.000100 mg/kg/day or 0.1% of the RfD for females (13-19 years not pregnant or nursing). Refinement of the estimates through the use of percent-of-crop-treated data and anticipated residues will result in lower exposure estimates. Even with these conservative assumptions, the risks from chronic dietary (food only) exposure to halosulfuron-methyl are less than 1% for all population subgroups listed in the DEEM analysis. Therefore, the risk from chronic "food only" exposure is below the Agency's level of concern (i.e.

≤ 100% of the chronic RfDs in the absence of additional safety factors, as is the case for halosulfuron-methyl).

Short- and intermediate-term exposure and risk. Margins of exposures (MOEs) can be calculated for food as well as residential exposures. The short-term NOAEL for females 13+ and infants and children is 50 mg/kg/day. Comparing the NOAEL of 50 mg/kg/day with the chronic food exposure from the DEEM analysis of 0.00025 mg/kg/day for females 13+ np/nn and 0.00075 mg/kg/day for infants/children results in food MOEs of 200,000 for females 13+ and 67,000 for infant/children.

The intermediate-term NOAEL is based on the chronic dietary NOAEL of 10 mg/kg/day. Comparison of the NOAEL of 10 mg/kg/day with the chronic food exposures from DEEM of 0.00010 for adult males and females 13+ np/nn and 0.00024 mg/kg/day for infants/children result in food MOEs of 100,000 for adult males and females 13+ and 42,000 for infants/children.

2. *From drinking water.* There are no established Maximum Contaminant Levels (MCL) for residues of halosulfuron-methyl in drinking water. It is not listed for MCL development or drinking water monitoring under the Safe Drinking Water Act nor is it a target of EPA's National Survey of Wells for Pesticides. No health advisory levels for halosulfuron-methyl in drinking water have been established. There are no information of any halosulfuron-methyl detections in any wells, ponds, lakes or streams resulting from its use in the United States. No monitoring data on residues of halosulfuron-methyl in surface and ground water are readily available. EPA used the SCI-GROW (Screening Concentration In Ground Water) to estimate residues of halosulfuron-methyl in ground water and the PRZM/EXAMS II to estimate the surface water concentrations. The SCI-GROW model is derived from a maximum 90-day average concentrations from monitoring studies conducted at sites believed to be vulnerable to, and under conditions likely to result in ground water contamination. Since variations in ground water concentrations are generally relatively minor over time periods of interest, the concentrations can be considered both acute and chronic values.

The estimated drinking water environmental concentrations (DWE) for halosulfuron-methyl in ground water (acute and chronic) is 0.008 µgram/Liter (µg/L). The estimated acute and chronic DWEs for surface water are 4.3 µg/L and 1.1 µg/L, respectively. These estimates are based on a maximum

application rate of 0.063 lbs. active ingredient/acre (ai/A) which may be applied twice per use season. Drinking water levels of comparisons (DWLOCs) for acute, short-term, intermediate-term, and chronic exposure were calculated and compared with DWEs. The Agency's default body weights and consumption values used to calculate DWLOCs are 70 kg/2L for adult males; 60 kg/2L for adult females; and 10 kg/1L for children.

i. *Acute exposure and risk.* EPA has calculated a DWLOC for acute exposure to halosulfuron-methyl in drinking water for the relevant population subgroups, females 13+ years of age and infants and children. The acute DWLOC is 15,000 µg/L for females (13+ years old) and 5,000 µg/L for infants and children, which is substantially higher than the DWEs for surface water (4.3 µg/L) and ground water (0.008 µg/L). Acute exposure to halosulfuron-methyl in drinking water is below the calculated drinking water level of concern.

ii. *Chronic exposure and risk.* EPA has calculated the DWLOCs for chronic exposure to halosulfuron-methyl in drinking water. For chronic exposure to halosulfuron-methyl in surface and ground water, the DWLOCs are 3,500 µg/L for the U.S. population (48 states), 3,000 µg/L for females 13+ years and 1,000 µg/L for infants/children, which are substantially higher than the chronic surface water DWE of 1.1 µg/L and the ground water DWE of 0.008 µg/L. Chronic exposure to halosulfuron-methyl in drinking water is below the calculated drinking water level of concern.

iii. *Short-term and intermediate-term exposure and risk.* The short-term DWLOCs calculated for drinking water are 10,000 µg/L for females 13+ and 3,700 µg/L for infants and children. The intermediate term DWLOCs calculated for drinking water are 590 µg/L for adult males; 57 µg/L for females (13+ np/nn) and 160 µg/L for infants and children. Intermediate-term DWLOCs are substantially higher than the DWE for chronic surface water (1.1 µg/L). Short-term DWLOCs substantially higher than the DWE for acute surface water (4.3 µg/L). Short- and intermediate-term exposures are below the calculated drinking water levels of concern.

3. *From non-dietary exposure.* Halosulfuron-methyl is currently registered for use on the following residential non-food sites: commercial and residential turf and on other non-crop sites including airports, cemeteries, fallow areas, golf courses, landscaped areas, public recreation areas, residential property, road sides, school

grounds, sod or turf seed farms, sports fields, landscaped areas, with established woody ornamentals and other similar use sites. For residential handlers and postapplication activities, short- to intermediate-term exposures may occur. Chronic exposures (6 or more months of continuous exposure) are not expected.

i. *Acute exposure and risk.* There is a potential for exposure to halosulfuron-methyl by homeowner mixer/loaders. However, since endpoints for acute dermal or inhalation were not identified, the use on residential non-food sites is not expected to pose an unacceptable acute risk.

ii. *Chronic exposure and risk.* Chronic exposures for residential use are not expected. A chronic non-dietary endpoint was not identified, therefore the use on residential non-food sites is not expected to pose an unacceptable chronic risk.

iii. *Short- and intermediate-term exposure and risk.* There is a potential for short-term and intermediate-term dermal exposure to residential handlers. Chemical specific or site specific data are not available to assess residential exposure to residues of halosulfuron-methyl on turf, therefore, the DRAFT Standard Operating Procedures (SOP) for Residential Exposure Assessments were employed to assess the following postapplication exposure scenarios: (a) dermal exposure from pesticide residues on turf; (b) children's incidental nondietary ingestion of pesticide residues on residential lawn from hand-to-mouth transfer; and (c) children's ingestion of pesticide-treated turfgrass.

For residential handlers the default assumptions for area treated and exposure duration time were selected from the DRAFT SOP for Residential Exposure Assessments (December 18, 1997). The SOP does not list a mixer/loader/applicator scenario for dry flowable (water-dispersible granule). Therefore, the unit exposure for "garden hose end sprayer/liquid/open pour (MLAP)" was selected as a default value. Based on Pesticide Handlers Exposure Data (PHED), a liquid formulation is believed to have a higher dermal exposure potential than a dry flowable. Default assumptions were used with the maximum application rate on the label to estimate residential handler exposure to halosulfuron-methyl. According to Table A-1 of the SOPs for Residential Exposure Assessments, the method used for estimating residential applicator exposure is believed to produce a central tendency to high-end estimate of exposure.

The short-term dermal MOE for residential handlers (60 kg adult) is 4,200. This MOE is greater than 100 and therefore does not exceed EPA's level of concern.

For adult and children postapplication scenarios the default assumptions, such as dermal transfer coefficient, exposure time, hand surface area, ingestion frequency, residue dissipation, and ingestion rates, were selected from the DRAFT SOPs for Residential Exposure Assessments (December 18, 1997). The dislodgeable foliar residue value used for intermediate exposure estimates was based on the average of the first 10-days (20% for fraction of ai retained on the foliage and 10% for fraction of residue that dissipates daily). Default assumptions were used with the maximum application rate on the label to estimate postapplication exposure to children and adults from treated lawns. According to Table A-1 of the SOP's for Residential Exposure Assessments, the method used for estimating postapplication exposure is believed to produce a high-end estimate of exposure.

The short-term dermal exposure and risk from treated lawn MOEs for adult females, adult males, and children are 330, 390, and 420, respectively. The intermediate-term dermal MOEs for adult females, adult males, and children are 100, 120, and 130, respectively. Both short and intermediate-term dermal MOEs are 100 or greater, and therefore do not exceed EPA's level of concern.

The short- and intermediate-term oral exposure and risk for hand to mouth transfer MOEs for children are 4,900 and 1,500, respectively. Both short and intermediate-term oral MOEs are greater than 100, and therefore do not exceed EPA's level of concern.

The short- and intermediate-term oral exposure and risk incidental ingestion MOEs for children are 210,000 and 66,000, respectively. Both short and intermediate MOEs are greater than 100, and therefore do not exceed EPA's level of concern.

4. *Cumulative exposure to substances with a 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."

EPA does not have, at this time, available data to determine whether halosulfuron-methyl has a common mechanism of toxicity with other substances or how to include this

pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, halosulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that halosulfuron-methyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Acute aggregate risk includes exposure from food + water. The risk from acute "food only" exposure is less than 1% of the RfD for all population subgroups which is less than the Agency's level of concern (100% of the RfD). The lowest DWLOC calculated was 5,000 µg/L for infants/children. The DWLOC calculated for females (13+ np/nn) was 15,000 µg/L. Both of these levels are higher than the DWLOC for acute surface water (4.3 µg/L) and ground water (0.008 µg/L). Therefore, the risk from aggregate exposure to halosulfuron-methyl does not exceed EPA's level of concern.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to halosulfuron-methyl from food will utilize 0.1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1-6) which utilizes 0.2% of the RfD as discussed below. 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. Despite the potential for exposure to halosulfuron-methyl in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to halosulfuron-methyl residues.

3. *Short- and intermediate-term exposure and risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus short-term and intermediate-term residential

exposure. For halosulfuron-methyl, EPA has determined that it is appropriate to aggregate exposure via the oral route (from food and water) with those via oral and dermal routes from residential uses. The MOEs can be calculated for dietary as well as residential exposures. However, there are no drinking water estimates (only estimates of surface water). Assuming a minimum Aggregate MOE of 100, short-term DWLOC was calculated. MOEs for "food only" and residential exposures are 200,000 and 310 for females 13+. The short-term DWLOC for females 13+ years is 10,000 µg/L. Short-term aggregate DWLOCs are substantially higher than the DWLOC for acute surface water (4.3 µg/L). The food and residential (oral and dermal) MOEs are well above the acceptable short-term aggregate MOE of 100. Therefore, short-term aggregate risk does not exceed EPA's level of concern. These estimates of food and residential exposure are considered to be somewhat conservative.

Intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus intermediate-term residential uses. The MOEs for "food only" and residential exposures are 100,000 and 120 for adult males, 100,000 and 102 for females 13+. The intermediate-term DWLOCs are 590 µg/L and 57 µg/L, respectively for adult males and females 13+ years. Intermediate-term DWLOCs are substantially higher than the DWLOC for chronic surface water (1.1 µg/L). The MOEs for food only and residential exposure (dermal) are higher than 100. Therefore, intermediate-term aggregate risk does not exceed EPA's level of concern.

4. *Aggregate cancer risk for U.S. population.* EPA has classified halosulfuron-methyl as a "not likely" carcinogen (no evidence of carcinogenicity to humans) based on the lack of evidence of carcinogenicity in mice and rats and therefore has a reasonable certainty that no harm will result from exposure to residues of halosulfuron-methyl.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to halosulfuron-methyl residues.

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 halosulfuron-methyl, 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 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 margin of exposure (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 uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty 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 MOE/safety factor.

ii. *Pre- and postnatal sensitivity.* Based on the developmental and reproductive toxicity studies, there is no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to halosulfuron-methyl. In these studies, the effects in the fetuses/offspring was observed only at or above treatment levels which resulted in evidence of parental toxicity.

The EPA determined that a postnatal developmental neurotoxicity study in rats is required based on the following weight-of-evidence considerations: (a) In the developmental toxicity study in rats, there was evidence of alterations to the development of the fetal nervous system at 750 mg/kg/day (highest dose tested) including dilation of the lateral ventricles (16 fetuses/5 litters), dilation of the third ventricle (1/1), spinal cord agenesis (1/1) and adrenal agenesis (1/1) at the high dose; and malformed brain cortex (1/1) at 250 mg/kg/day; (b) There was no evaluation of perfused nervous system tissues, since acute and subchronic neurotoxicity studies in rats were not required. The primary concern is the lack of information in the data base that would allow the determination

of whether functional deficits would be observed at dose levels below those which result in frank malformations of the central nervous system.

iii. *Conclusion.* Except for the pending requirements for a developmental neurotoxicity study, the toxicity data base is complete for halosulfuron-methyl and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. EPA concludes, based on reliable data, that use of the standard margin of safety will be safe for infants and children without the addition of another tenfold factor. The requirement of a developmental neurotoxicity study in rats did not warrant application of additional safety factor because: (a) the alterations observed in the fetal nervous system occurred in only one species (in rats and not in rabbits); (b) the fetal effects which will be investigated in the required developmental neurotoxicity study were seen only at a dose of 750 mg/kg/day which is close to the limit-dose (1,000 mg/kg/day); (c) there was no evidence of clinical signs of neurotoxicity, brain weight changes, or neuropathology in the subchronic or chronic studies in rats; (d) the developmental neurotoxicity study is required only as confirmatory data to understand what the effect is at a high exposure (dose) level; and (e) exposure assessments do not indicate a concern for potential risk to infants and children based on the results of the field trial studies and the very low application rate (0.06 lbs ai/A). Detectable residues are not expected in human foods.

2. *Acute risk.* The acute dietary RfD was determined to be 0.5 mg/kg/day based on the NOAEL from the developmental rabbit study (50 mg/kg/day) and a safety factor of 100. Based on the high-end exposures, the percent of the RfD occupied for the U.S. population was 0.06%, 0.15% for non-nursing infants (<1 year old) and 0.05% females 13+ years old. The subgroup with the highest exposure was the non-nursing infants (<1 year old). The drinking water level of comparison (DWLOC) for acute exposure to halosulfuron-methyl residues for infants/children is 5,000 µg/L. The maximum concentration of halosulfuron-methyl in drinking water (4.3 µg/L) is less than EPA's level of comparison for halosulfuron-methyl in drinking water as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that the potential risk from aggregate acute exposure (food and water) would not exceed the Agency's level of concern.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to halosulfuron-methyl from food will utilize 0.2% of the RfD for infants and children. 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. Despite the potential for exposure to halosulfuron-methyl in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* An aggregate exposure estimate and risk assessment was calculated for postapplication exposure to halosulfuron from treated lawns. Short-term MOEs for food, residential oral, and residential dermal are 67,000, 5,000, and 420 respectively, for infants and children. The intermediate-term MOEs for food, residential oral, and residential dermal are 42,000, 1,500, and 130, respectively for infants and children. The short and intermediate-term DWLOCs for infants and children were 3,700 and 160 mg/L, respectively. The short and intermediate DWLOCs are substantially higher than the DWECs for acute surface water (4.3 µg/L) and chronic surface water (1.1 µg/L). The food and residential MOEs are above the acceptable aggregate MOE of 100. Therefore, short- and intermediate-term aggregate risk does not exceed EPA's level of concerns for infants and children.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to halosulfuron-methyl residues.

III. Other Considerations

A. Metabolism In Plants and Animals

Plant metabolism studies have been submitted and reviewed for corn, sugarcane, and soybean. These studies show that the primary residue resulting from preemergence applications is 3-chlorosulfonamide acid. With postemergence application, the major residue is parent halosulfuron-methyl, except in corn, in which 3-chlorosulfonamide acid predominates. Inadvertent residues in rotational crops are also primarily 3-chlorosulfonamide acid. However, 3-chlorosulfonamide acid is not of toxicological concern and the residue to be regulated in plants is halosulfuron-methyl per se, as

determined by the HED Metabolism Committee.

Goat and hen metabolism studies on halosulfuron-methyl have been accepted by EPA. As with plants, the residue of concern in animals is halosulfuron-methyl per se. The current Agency-approved method for enforcement of tolerances for halosulfuron-methyl in animal commodities is based on analysis of the chlorosulfonamide half of the halosulfuron-methyl molecule; thus, it quantitates residues of parent halosulfuron-methyl as well as those metabolites containing the chlorosulfonamide acid moiety (i.e., it is not specific to halosulfuron-methyl per se.) The requested uses are not expected to increase the residues in animal commodities above those already regulated by 40 CFR 180.479. Animal tolerances will still be expressed as halosulfuron-methyl and its metabolites determined as 3-chlorosulfonic acid, expressed as parent equivalent.

B. Analytical Enforcement Methodology

Adequate analytical methodology (gas chromatography with electron capture detection) is available for enforcement of tolerances for halosulfuron-methyl in animal commodities. Adequate analytical methodology (gas chromatography/thermionic specific) is available for enforcement of tolerances for halosulfuron in plant commodities.

Adequate enforcement methodology (gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5229.

C. Magnitude of Residues

The available crop field trial data support the establishment of tolerances for residues of the herbicide halosulfuron-methyl, [methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino] carbonylamino sulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate] in or on the raw agricultural commodities almond, hull at 0.2 part per million (ppm); corn, field, fodder at 0.8 ppm; corn, field, forage at 0.2 ppm; corn, field, grain at 0.05 ppm; corn, pop, fodder at 0.8 ppm; corn, pop, grain at 0.05 ppm; corn, sweet, fodder, at 0.8 ppm; corn, sweet, forage at 0.2 ppm; corn, sweet, kernel + cob with husks removed at 0.05 ppm; cotton, gin by products at 0.05 ppm; cotton, undelinted seed at 0.05 ppm; pistachio, nutmeat at 0.05 ppm rice, grain at 0.05

ppm, rice, straw at 0.2 ppm; sorghum, grain, fodder/stover at 0.1 ppm; sorghum, grain, forage at 0.05 ppm; sorghum, grain, grain at 0.05 ppm; sugarcane, cane at 0.05 ppm; and tree nuts (crop group 14), nutmeat at 0.05 ppm.

The available crop residue data also support the deletion of the current established tolerances for soybean, forage at 0.5 ppm; soybean, hay at 0.5 ppm; soybean, seed at 0.5 ppm wheat, forage at 0.1 ppm; wheat, grain at 0.1 ppm; and wheat, straw at 0.2 ppm.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits (MRLs) established for halosulfuron-methyl, therefore harmonization is not an issue.

E. Rotational Crop Restrictions

Tolerances were previously established for inadvertent residues in rotational crops. These tolerances were based on residues of 3-chlorosulfonamide acid which is not of toxicological concern and is no longer being regulated by EPA in plant commodities. Therefore, rotational crop tolerances are not necessary and are being deleted by this rule.

IV. Conclusion

Therefore, tolerances are established for residues of methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylamino sulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate in almond, hulls at 0.2 ppm; corn, field, fodder at 0.8 ppm; corn, field, forage at 0.2 ppm; corn, field, grain at 0.05 ppm; corn, pop, fodder at 0.8 ppm, corn, pop, grain at 0.05 ppm; corn, sweet, fodder/stover at 0.8 ppm; corn, sweet, forage at 0.2 ppm; corn, sweet, kernel + cob with husks removed at 0.05 ppm; cotton, gin by-products at 0.05 ppm; cotton, undelinted seed at 0.05 ppm; pistachio, nutmeat at 0.05 ppm; rice, grain at 0.05 ppm; rice, straw at 0.2 ppm; sorghum, grain, fodder/stover at 0.1 ppm; sorghum, grain, forage at 0.05 ppm; sorghum, grain, grain at 0.05 ppm; sugarcane, cane at 0.05 and tree nuts (crop group 14), nutmeat at 0.05 ppm.

These entries for corn, field, fodder, corn, field, forage; corn, field, grain; sorghum, grain, fodder/stover; sorghum, grain, forage; and sorghum, grain, will replace current entries for these commodities.

Established tolerances for indirect or inadvertent residues of the herbicide halosulfuron-methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylamino sulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, and

its metabolites determined as the 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents in on the following raw agricultural commodities when present to growing crops: soybean, forage at 0.05 ppm; soybean, hay at 0.5 ppm; soybean, seed at 0.5 ppm; wheat, forage at 0.1 ppm wheat, grain at 0.1 ppm, and wheat, straw at 0.1 ppm are being deleted.

V. Objections and Hearing Requests

The new FFDC section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation 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 July 12, 1999, 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 under the ADDRESSES section (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 regulation. 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). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, 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. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollies, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300854] (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 Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes, modifies, and revokes tolerances under section 408(d) of the FFDCa in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are "not significant" unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (P.A.), 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 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 tolerances and exemptions that are established, modified or revoked 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 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the*

Intergovernmental Partnership (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of

Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: April 29, 1999.

James Jones,

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. 321(q), 346a and 371.

2. Section 180.479, is revised to read as follows:

§ 180.479 Halosulfuron; tolerances for residues.

(a) General. (1) Tolerances are established for residues of the herbicide halosulfuron, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino] carbonylamino sulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents, in or on the raw agricultural commodities listed below.

Commodity	Parts per million
Goats, mbyop	0.1
Hogs, mbyop	0.1
Horses, mbyop	0.1
Sheep, mbyop	0.1

(2) Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino]carbonylamino sulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, in or on the raw agricultural commodities listed below.

Commodity	Parts per million
Almond, hulls	0.2
Corn, field, fodder	0.8
Corn, field, forage	0.2
Corn, field, grain	0.05
Corn, pop, fodder	0.8
Corn, pop, grain	0.05
Corn, sweet, fodder/stover	0.8
Corn, sweet, forage	0.2
Corn, sweet, kernel + cob with husks removed	0.05
Cotton, gin by-products	0.05
Cotton, undelinted seed	0.05
Pistachio, nutmeat	0.05
Rice, grain	0.05
Rice, straw	0.2
Sorghum, grain, fodder/stover	0.1
Sorghum, grain, forage	0.05
Sorghum, grain, grain	0.05
Sugarcane, cane ..	0.05
Tree nuts (crop group 14), nutmeat	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99-11835 Filed 5-11-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300840; FRL-6074-2]

RIN 2070-AB78

Azoxystrobin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the fungicide azoxystrobin and its metabolites in or on watercress at 1.0 part per million (ppm) for an additional 18-month period. This tolerance will expire and is revoked on October 30, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on watercress. 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 FIFRA section 18.

DATES: This regulation becomes effective May 12, 1999. Objections and requests for hearings must be received by EPA, on or before July 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP-300840], 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-300840], 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. 119, Crystal Mall 2, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Commodity	Parts per million
Cattle, mybp	0.1

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@epa.gov. Copies of electronic 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 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300840]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline E. Gwaltney, 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. 278, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6792, Gwaltney.Jackie@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 12, 1998 (63 FR 26089) (FRL-5787-8), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) it established a time-limited tolerance for the combined residues of azoxystrobin and its metabolites in or on watercress at 1.0 ppm, with an expiration date of June 30, 1999. 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 FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of azoxystrobin on watercress for this year's growing season because for watercress, copper hydroxide is the only material registered for control of *Cercospora* leaf spot disease. Several applications of copper hydroxide are required per season for adequate control. Although copper hydroxide is still effective at controlling *Cercospora* leaf spot disease, due to the many

required applications, levels of copper in soil and watercress plants have reached phytotoxic levels. As a consequence, in areas where watercress has been grown for several years, yield has been significantly reduced. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of azoxystrobin on watercress for control of cercospora leaf spot disease in watercress.

EPA assessed the potential risks presented by residues of azoxystrobin in or on watercress. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 12, 1998 (63 FR 26089) (FRL-5787-8). 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). Therefore, the time-limited tolerance is extended for an additional 18-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on October 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on watercress 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 FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA 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 July 12, 1999, 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 under the "ADDRESSES" section (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). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, 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. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

EPA has established a record for this regulation under docket control number [OPP-300840] (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 Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 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 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 tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of

Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1999.

James Jones,

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. 321(q), 346a and 371.

§ 180.507 [Amended]

2. In § 180.507, the table to paragraph (b) by revising the date for the commodity watercress, "6/30/99" to read "10/30/00".

[FR Doc. 99-11834 Filed 5-11-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300857; FRL-6079-5]

RIN 2070-AB78

Dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a permanent tolerance for the residues of dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on potatoes, wet peel and time-limited tolerances for the indirect or inadvertent residues of dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on the cereal grains group for fo12er, forage, grain, hay and straw. American Cyanamid Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 12, 1999. Objections and requests for hearings must be received by EPA on or before July 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP-300857], 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-300857], 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. 119, 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@epa.gov. Copies of electronic 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 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300857]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, 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. 249, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-308-9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Registers** of March 26, 1997 (62 FR 14418) (FRL-5594-7) and of March 10, 1999 (64 FR 11874) (FRL-6063-3), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) announcing the filing of a pesticide petition (PP) for tolerance by American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543-0400. These notices included a summary of the petition prepared by American

Cyanamid Company, the registrant. There were no comments received in response to the notices of filing.

The petition requested that 40 CFR 180.493 be amended by establishing a tolerance for residues of the fungicide dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on potatoes, wet peel at 0.15 parts per million (ppm) and time-limited tolerances for the indirect or inadvertent residues of the fungicide dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on cereal grains group: fodder at 0.15 ppm, forage at 0.05 ppm, grain at 0.05 ppm, hay at 0.10 ppm, and straw at 0.15 ppm. These time-limited tolerances will expire on May 12, 2004.

I. Background and Statutory Findings

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...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

II. 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 dimethomorph and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a

tolerance for residues of the fungicide dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on potatoes, wet peel at 0.15 ppm and time-limited tolerance for the indirect or inadvertent residues of dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on the cereal grains group: fodder at 0.15 ppm, forage at 0.05 ppm, grain at 0.05 ppm, hay at 0.10 ppm, and straw at 0.15 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has previously 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 tolerance for potatoes, wet peel, toxicological profile for dimethomorph were addressed in the risk assessment published in the Federal Register final rule of October 13, 1998 (63 FR 54587) (FRL-6036-7). The risk assessment for rotational crops addressed the changes which occurred as a result of the granting of time-limited tolerances for rotational crops.

B. Toxicological Endpoints

The toxicological endpoints for dimethomorph were addressed in the risk assessment published in the Federal Register final rule of October 13, 1998 (63 FR 54587) (FRL-6036-7).

C. Exposures and Risks

1. From food and feed uses. Tolerances have been established (40 CFR 180.493) for the residues of dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on potatoes at 0.05 ppm and time-limited tolerances for tomatoes at 1 ppm (expires May 15, 1999) and cantaloupe, cucumber, squash and watermelon at 1 ppm (expires March 31, 2000). Anticipated residues were not generated as part of this risk assessment. In the dietary analysis, the most highly exposed subgroup, children 1-6 years, utilized only 4.3% of the reference dose (RfD)/population adjusted dose (PAD) As a result, no refinement to the analysis was needed. Risk assessments were conducted by EPA to assess dietary exposures from dimethomorph as follows:

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. EPA did not select a dose and endpoint for an acute dietary risk assessment because of the lack of toxicological effects attributable to a single exposure (dose) in either the rat or the rabbit developmental toxicity studies.

ii. Chronic exposure and risk. EPA's Dietary Exposure Evaluation Model (DEEM89) was used for conducting a chronic dietary (food only) exposure analysis (risk assessment). The analysis evaluates individual food consumption as reported by respondents in the USDA 1989-1991 Nationwide Continuing Surveys for Food Intake by Individuals, and accumulates exposure to the chemical for each commodity. The exposure for each subgroup is reported as a percentage of the PAD. As the 10x safety factor was removed for dimethomorph, the PAD is equivalent to the RfD.

In conducting this chronic tier 1 dietary risk assessment, EPA has made very conservative assumptions: that all commodities having dimethomorph tolerances contain residues of dimethomorph and those residues are at the level of the tolerance. These assumptions result in an overestimate of human dietary exposure. All Section 18 tolerances (i.e., cantaloupes, watermelons, cucumbers, squash, and tomatoes) are included in this dietary risk assessment. Using the assumptions and data parameters described above, the DEEM89 exposure analysis results in a theoretical maximum residue contribution (TMRC) that is equivalent to the following percentages of the PAD/RfD. The following table summarizes the estimated food exposures for the U.S. population, the population subgroups that include infants and children, the most highly exposed female subgroup, and all other population subgroups (excluding regions and seasons) with risk estimates above that of the U.S. population:

TABLE 1.— SUMMARY OF FOOD EXPOSURE TO DIMETHOMORPH

Population Subgroup	Exposure (mg/kg body wt/day)	%PAD/RfD
U.S. Population (total)	0.0020	2
Hispanics	0.0022	2
Non-Hispanic/non-white/non-black	0.0022	2

TABLE 1.— SUMMARY OF FOOD EXPOSURE TO DIMETHOMORPH—Continued

Population Subgroup	Exposure (mg/kg body wt/day)	%PAD/RfD
Nursing Infants	0.0006	0.6
Non-nursing Infants ..	0.0024	2
Children 1-6 years ...	0.0043	4
Children 7-12 years	0.0030	3
Females 13-19 (not pregnant or nursing)	0.0021	2
Males 13-19 years ...	0.0021	2

2. From drinking water. EPA used SCI-GROW (Screening Concentration In Ground Water) and GENEEC (Generic Estimated Environmental Concentration) models to determine the estimated environmental concentrations (EECs) of dimethomorph residues in ground and surface water. The EEC reported for dimethomorph residues in ground water is 0.26 parts per billion (ppb). The EEC for surface water is 28 ppb for acute and 24 ppb for chronic (56-day).

i. Acute exposure and risk. Because no acute dietary endpoint was determined, an acute water and dietary exposure risk assessment is not required.

ii. Chronic exposure and risk. EPA conducts the drinking water risk assessment by using the worst case scenario of estimated environmental concentration (EEC) found from either ground or surface water. The EEC reported for dimethomorph residues in ground water using SCI-GROW is 0.26 ppb. This is much less than the surface water EEC (24 ppb for 56 days) generated using GENEEC. Therefore, only the surface water EEC will be used in conducting the aggregate dietary (food + water) risk assessment. Based on the chronic dietary (food) exposure and using default body weights and water consumption figures, chronic drinking water levels of comparison (DWLOCs) for drinking water were calculated. To calculate the chronic DWLOC, the chronic dietary food exposure (from DEEM analysis) is subtracted from the chronic PAD/RfD. DWLOCs are then calculated using the default body weights and drinking water consumption figures. EPA's surface drinking water levels of comparison from chronic exposure to dimethomorph using modeling data are 3,400 ppb for the U.S. Population and the population subgroup non-Hispanic/non-white/non-black, 2,900 ppb for females 13-19 (not pregnant or nursing),

and 960 ppb for children 1–6 years. These levels are all greater than the GENECC concentration level (24 ppb for 56 days). Therefore, EPA does not expect exposure to dimethomorph in drinking water to be above the level of concern.

3. *From non-dietary exposure.* There are no registered or proposed residential uses for dimethomorph. Therefore, residential or inhalation exposures were not evaluated in the risk assessment.

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.”

EPA does not have, at this time, available data to determine whether dimethomorph has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethomorph has a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* No acute dietary endpoint was identified; therefore, EPA concludes that dimethomorph poses no appreciable acute risk.

2. *Chronic risk.* EPA has concluded that aggregate exposure to dimethomorph from food will utilize 2% of the RfD for the U.S. population, 2% for females 13–19 (not pregnant or nursing), 4% for children 1 through 6 years of age, and 2% for non-Hispanic/non-white/non-black. The surface drinking water levels of comparison from chronic exposure to dimethomorph using modeling data are 3,400 ppb for the U.S. population and population subgroup non-Hispanic/non-white/non-black, 2,900 ppb for females 13–19 (not pregnant or nursing), and 960 ppb for children 1–6 years. These

levels are all greater than the GENECC chronic concentration level (24 ppb for 56 days) and the SCI-GROW ground level water of 0.26 ppb. 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. There are no registered residential uses of dimethomorph.

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. Although short- and intermediate-term endpoints were identified, there are no residential uses for dimethomorph.

4. *Aggregate cancer risk for U.S. population.* Dimethomorph was classified as “not likely” to be a human carcinogen. Therefore, a carcinogenic aggregate risk assessment was not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of dimethomorph.

E. Aggregate Risks and Determination of Safety for Infants and Children

EPA assessed the potential for additional sensitivity of infants and children to residues of dimethomorph. The aggregate risks for dimethomorph were published in the **Federal Register** final rule of October 13, 1998 (63 FR 54587)(FRL–6036–7). There is a complete toxicity database for dimethomorph and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. EPA has concluded that aggregate exposure to dimethomorph from food will utilize 4.3% of the RfD for infants and children. 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. Despite the potential for exposure to dimethomorph in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dimethomorph residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in potatoes is adequately understood. For purposes of time-limited tolerances, the residue of concern in rotational crops is the same as that in directly treated crops, i.e., dimethomorph per se. The nature of the residue in animals is adequately defined for section 3 registration on potatoes. Tolerances are not required for residues in livestock commodities at this time.

B. Analytical Enforcement Methodology

Method FAMS 002–04 high performance liquid chromatography using ultra-violet detection (HPLC, UV detection) is adequate for determining residues of dimethomorph per se in/on potatoes. A confirmatory method is also available (FAM 022–03).

The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229). Based on recovery data from the independent laboratory validation as well as concurrent recovery data from limited rotational field trials, EPA concludes that Method M 3112 gas chromatography, nitrogen phosphorus detection (GC, N-P detection) has been adequately validated and is suitable for collecting residue data on levels of dimethomorph per se in/on wheat raw agricultural commodities (RACs). The reported limit of quantitation of the method is 0.05 ppm. Prior to the establishment of permanent rotational crop tolerances, Method M 3112 must be submitted for Agency method validation. Acceptance of Method M 3112 as an enforcement method is predicated upon completion of a successful Agency method tryout. For the purpose of establishing time-limited tolerances on wheat RACs, EPA recommended using the Food and Drug Administration’s (FDA’s) multiresidue method Protocol D as the enforcement method for determining residues of dimethomorph per se in/on cereal grain RACs. EPA noted that Method FAMS 002–04 (HPLC, UV detection), a method submitted in conjunction with PP#2E4054, has been determined adequate as an enforcement method for determining residues of dimethomorph per se in/on potatoes. Although the extraction procedures of Method M 3112 are essentially similar to those of Method FAMS 002–04, the instrumentation and quantitation of

residues are different. Dimethomorph is recovered by Protocol D of FDA's multi-residue method protocols (PAM Vol. I).

C. Magnitude of Residues

EPA has concluded that residue data submitted in support of the tolerance for potatoes indicate that a tolerance level of 0.15 ppm is an adequate level for potatoes, wet peel. In addition, domestic field trial data supported the tolerance level of 0.15 ppm on potatoes, wet peel and indicated that dimethomorph residues do not pose an adverse health risk to humans under the use conditions. Therefore, EPA has no objection to the establishment of a tolerance of 0.15 ppm for residues of the fungicide dimethomorph in/on potatoes, wet peel under 40 CFR 180.493.

For the purpose of establishing permanent rotational crop tolerances for residues of dimethomorph in/on cereal grains, the limited wheat rotational field trial data are inadequate because of poor geographic representation of data, and because residue data are required for other crops representative of cereal grains. However, as the available data indicate that most treated wheat raw agricultural commodity (RAC) samples bore nonquantifiable (< 0.05 ppm) residues, EPA recommends in favor of the establishment of time-limited tolerances for the forage and grain of cereal grains at 0.05 ppm, for hay of cereal grains at 0.10 ppm, and for the fodder and straw of cereal grains at 0.15 ppm under 40 CFR 180.493.

D. International Residue Limits

There are no Canadian, Mexican, or Codex MRLs established for dimethomorph for the commodities associated with this request; consequently, a discussion of international harmonization is not relevant.

E. Rotational Crop Restrictions

The plant back intervals for rotational crops are: 0 days for potatoes; 1 month for barley, broccoli, cabbage, carrot, cauliflower, celery, lettuce, oats, onion, radish, spinach, sugarbeets, tobacco and wheat; 7 months for alfalfa, beans, clover, corn (field, sweet, seed, and pop), peas, rice, sorghum, and soybeans; 12 months for all other crops.

IV. Conclusion

Therefore, the tolerance for residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on potatoes, wet peel at 0.15 ppm and time-limited tolerances are established for the indirect or inadvertent residues of

dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in the cereal grains group: fodder at 0.15 ppm, forage at 0.05 ppm, grain at 0.05 ppm, hay at 0.10 ppm, and straw at 0.15 ppm. These time-limited tolerances expire May 12, 2004.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation 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 July 12, 1999, 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 under "ADDRESSES" section (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). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, 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. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300857] (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 119 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.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCa in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). 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 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 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR

58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action

does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: April 30, 1999

James Jones,

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. 321(q), 346(a), and 371.

2. In § 180.493, by revising paragraphs (a) and (d) to read as follows:

§ 180.493 Dimethomorph, tolerances for residues.

(a) *General.* A tolerance is established for the residues of the fungicide dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on the following commodity:

Commodity	Parts per million
Potatoes, wet peel	0.15

* * * * *

(d) *Indirect or inadvertent residues.* Time-limited tolerances are established for inadvertent or indirect residues of the fungicide dimethomorph in or on

the following raw agricultural commodities when present therein as a result of the application of dimethomorph to growing crops. The

tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Cereal grains group, fodder	0.15	May 12, 2004
Cereal grains group, forage	0.05	May 12, 2004
Cereal grains group, grain	0.05	May 12, 2004
Cereal grains group, hay	0.10	May 12, 2004
Cereal grains group, straw	0.15	May 12, 2004

[FR Doc. 99-11565 Filed 5-11-99; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 413, 414, 415, 424, and 485

[HCFA-1006-CN]

RIN 0938-A152

Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 2, 1998, entitled "Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999."

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786-3355

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 98-29181 of November 2, 1998, (63 FR 58814), there were a number of technical errors. The errors relate to the omission of background information, an incorrect reference, the qualification requirements for nonphysician practitioners, a typographical error, a correction to a CPT code modifier in Table 6, an inconsistency in the preamble and addendum, the omission of status indicator references, the omission of a

facility type in the regulations text, and revisions to Addendum B.

The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on November 2, 1998, that is, January 1, 1999.

Discussion of Addendum B

1. We inadvertently omitted the professional and technical portions for the following CPT code. Entries on the page listed below are corrected as follows: Page 59073 for CPT codes 78020-26 and 78020-TC. These corrections are reflected in correction number 19 to follow.

2. We assigned incorrect status codes to the following CPT codes. Entries on pages listed below are corrected as follows: Page 59087 for CPT code 82251; page 59114 for CPT codes 90471 and 90472; page 59181 for CPT code R0070; and page 59182 for CPT code R0075. These corrections are reflected in correction number 20 to follow.

3. We assigned incorrect RVUs or modifiers for the following CPT codes. Entries on pages listed below are corrected as follows: Page 59109 for CPT code 88141; page 59132 for CPT codes 94014, 94014-26, and 94014-TC; 94015, 94015-26, 94015-TC; and 94016; page 59168 for CPT code G0124; and page 59169 for CPT code G0141. These corrections are reflected in correction number 21 to follow.

4. We stated that we would not provide a transition for codes representing services that are new beginning in 1999. The codes identified below are new CPT codes, but do not represent new services. These codes were previously reported with a different CPT code. We failed to apply the transition to these services. The corrected RVUs for the codes are as follows: Page 58965 for CPT codes 31623, 31624, and 31643; page 58977 for CPT codes 35682, and 35683; page 59133 for CPT codes 94621, 94621-26, and 94621-TC. These corrections are

reflected in correction number 22 to follow.

5. We erroneously assigned relative value units to the following CPT codes in the facility setting. By definition the following CPT codes cannot be performed in the facility setting. Columns associated with facility relative value units should be set to NA in Addendum B. Entries on pages listed below are corrected as follows: Page 59144 for CPT codes 99321, 99322, 99323, 99331, 99332, 99333, 99341, 99342, 99343, 99344, 99345, 99347, 99348, 99349, and 99350; page 59145 for CPT codes 99374 and 99375. These corrections are reflected in correction number 23 to follow.

Correction of Errors

In FR Doc. 98-29181 of November 2, 1998, make the following corrections:

1. On page 58814, column three, "Table of Contents", after subsection "I.B", add a new subsection "C" to read as follows:

"C. Components of the Fee Schedule Payment Amounts"

2. On page 58816, column one, add a new subsection "C", to read as follows:

"C. Components of the Fee Schedule Payment Amounts"

Under the formula set forth in section 1848(b)(1) of the Act, the payment amount for each service paid for under the physician fee schedule is the product of three factors: (1) A nationally uniform relative value for the service; (2) a geographic adjustment factor (GAF) for each physician fee schedule area; and (3) a nationally uniform conversion factor (CF) for the service. The CF converts the relative values into payment amounts.

For each physician fee schedule service, there are three relative values: (1) An RVU for physician work; (2) an RVU for practice expense (NOTE: This RVU will vary on a code by code basis depending upon if the service is performed in a facility or non-facility setting); and (3) an RVU for malpractice

expense. For each of these components of the fee schedule there is a geographic practice cost index (GPCI) for each fee schedule area. The GPICs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average for each component.

The general formula for calculating the Medicare fee schedule amount for a given service in a given fee schedule area can be expressed as:

$$\text{Payment} = [(\text{RVU work} * \text{GPCI work}) + (\text{RVU practice expense} * \text{GPCI practice expense}) + (\text{RVU malpractice} * \text{GPCI malpractice})] * \text{CF}$$

The CF for calendar year 1999 appears in Section V. "Physician Fee Schedule Update and Conversion Factor for Calendar Year 1999." The RVUs for calendar year 1999 are in Addendum B. The GPICs for calendar year 1999 can be found in Addendum D of the October 31, 1997, final rule (62 FR 59255).

Section 1848(e) of the Act requires the Secretary to develop GAFs for all physician fee schedule areas. The total GAF for a fee schedule area is equal to a weighted average of the individual GPICs for each of the three components of the service. Thus, the GPICs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average. In accordance with the law, however, the GAF for the physician's work reflects one-quarter of the relative cost of physician's work compared to the national average."

3. On page 58827, in column three, bullet two, line two, "REUS" is corrected to read "RVUs."

4. On page 58828, in column 1, the first full paragraph, lines 4 and 11, "REUS" is corrected to read "RVUs."

5. On page 58844, there is an inaccuracy in the discussion concerning physician direction of concurrent anesthesia services. In the discussion, we inadvertently failed to include the revisions to the policy that were made in the September 1, 1983 final rule (48 FR 39740) and currently appear in section 15018C of the Medicare Carrier Manual (MCM).

Therefore, on page 58844, column three, the second full paragraph from the top is corrected to read as follows: "If a physician is directing four concurrent surgical procedures and devotes extensive time to checking or discharging other patients in the recovery room or handling scheduling matters, this could unduly diminish physician involvement in the surgical cases. If significantly reduced, a physician's involvement in the surgical

cases would become "supervision" rather than "medical direction." Also, a physician cannot personally be extensively involved in recovery room or scheduling matters of significant duration because such personal services would diminish the scope of control necessary for medical direction."

6. On page 58874, in the second column, third paragraph beginning "Result of evaluation of comments" we discuss the qualifications required for a nurse practitioner to be eligible for Medicare Part B payment. We erred in establishing the effective date for the requirements for nurse practitioners. The date should be January 1, 2000. The provisions for nurse practitioner qualifications will not be effective until January 1, 2000. In column 2, paragraph 3, line 3, insert the words "after December 31, 1999," after the comma.

7. On page 58878, in the third column, fourth full paragraph, the first bullet, the name of the national accreditation organization was published incorrectly. Therefore, remove the word "National." Also, we inadvertently omitted the word "or" after the semicolon. The word "or" was included in the proposed rule and there was no change intended in this area. Therefore, the word "or" should be added after the semicolon. The first bullet should now read as follows: "Has graduated from a physician assistant educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; or"

In the second bullet, the third line we incorrectly stated that the national certification examination is "certified" by the National Commission on Certification of Physician Assistants. This organization "administers" the examination. Therefore, the word "certified" is removed and replaced with "administered." The second bullet should now read as follows: "Has passed the national certification examination that is administered by the National Commission on Certification of Physician Assistants; and"

8. On page 58889, in Table 6, the last line, the second column, the modifier for CPT code 94014, remove "26" and leave the column blank.

9. On page 58892, in the third column, the third bullet, line 6, remove the word "National". In line 7, remove the second use of the word "on" and add the word "of", and add the word "or" after the semicolon. Line 11, the word "certified" is replaced with "administered." The third bullet should now read as follows: " Proposed § 410.74(c) is revised to state that a physician assistant is an individual who—

- Has graduated from a physician assistant educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; or

- Has passed the national certification examination that is administered by the National Commission on Certification of Physician Assistants; and

- Is licensed by the State to practice as a physician assistant."

§ 410.74 [Corrected]

10. On page 58908, in column one, in the regulations text, under § 410.74, paragraph (c)(1), remove the word "National" and add the word "or" after the semicolon. In paragraph (c)(2), line two, remove the word "of" and add the phrase "that is administered by."

§ 410.75 [Corrected]

11. On page 58908, in column one, in the regulations text, under § 410.75, paragraph (b), "For" is corrected to read, "After December 31, 1999, for".

§ 414.32 [Corrected]

12. On page 58911, in the first column, correct the amendatory language in item 5, and add paragraph (a)(6) to read as follows:

"5. In § 414.32, the heading and paragraphs (a)(6) and (b) are revised to read as follows:

(a) *Definition.* * * *

(6) Skilled nursing facilities."

§ 485.705 [Corrected]

13. On page 58913, in column one, in the regulations text, under § 485.705, paragraph (c)(8) introductory text is corrected to read as follows:

"(c) * * *

(8) After December 31, 1999, a nurse practitioner is a person who must:"

14. On page 58913, column one, § 485.705(c)(10)(i) is corrected by removing the word "National" and, after the semicolon, replacing the word "and" with "or" and paragraph (c)(10)(ii) is corrected by, removing the word "certified" and adding "administered" in its place. In paragraph (c)(10)(iii), the first use of the phrase "as a physician assistant" is removed.

Addendum B [Corrected]

15. On page 58913, in column three, add the following after the entry for status code "G":

"H = Deleted modifier (code used to have a modifier of TC and PC)
I = Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code

for reporting of, and payment for, these services. This indicator is treated in the same manner as status

indicator "G." Its use allows for more efficient carrier processing of Medicare claims."

16. On page 58914, in columns two and three, in the definitions for "11" and "12", remove the words "for 1999."

Addendum B

17. In the table of Addendum B, the following CPT codes are added to read as follows:

CPT1 ¹ / HCPCS ²	Mod	Status	Description	Physician work RVUs ³	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility Total	Transitioned facility total	Global
78020	26	A	Thyroid met uptake	0.60	0.02	0.02	0.02	0.02	0.02	0.64	0.64	0.64	0.64	ZZZ
78020	TC	A	Thyroid met uptake	0.00	0.15	0.15	0.15	0.15	0.06	0.21	0.21	0.21	0.21	ZZZ

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³ Indicates RVUs are not used for Medicare payment.

18. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 ¹ / HCPCS ²	Mod	Status	Description	Physician work RVUs ³	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
82251		X	Assay Bilirubin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90471		X	Immunization admin, single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90472		X	Immunization admin, 2+	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0070		C	Transport portable x-ray	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0075		C	Transport port x-ray multipl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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³ +Indicates RVUs are not used for Medicare payment.

19. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 ¹ / HCPCS ²	Mod	Status	Description	Physician work RVUs ³	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
88141		A	Cytpath c/vag interpret	0.42	0.18	0.56	0.18	0.31	0.03	0.63	1.01	0.63	0.76	ZZZ
94014		A	Patient recorded spirometry	0.52	0.63	0.63	0.63	0.63	0.04	1.19	1.19	1.19	1.19	XXX
94014	26	H	Patient recorded spirometry	0.52	0.20	0.20	0.20	0.20	0.02	0.74	0.74	0.74	0.74	XXX
94014	TC	H	Patient recorded spirometry	0.00	0.43	0.43	0.43	0.43	0.02	0.45	0.45	0.45	0.45	XXX
94015		A	Patient recorded spirometry	0.00	0.43	0.00	0.43	0.00	0.02	0.45	0.00	0.45	0.00	XXX
94015	26	H	Patient recorded spirometry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94015	TC	H	Patient recorded spirometry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94016		A	Review patient spirometry ..	0.52	0.20	0.20	0.20	0.20	0.02	0.74	0.74	0.74	0.74	XXX
G0124		A	Screen c/v thin layer by MD	0.42	0.18	0.30	0.18	0.30	0.03	0.63	0.75	0.63	0.75	XXX
G0141		A	Scr c/v cyto, autosys and md.	0.42	0.18	0.15	0.18	0.15	0.03	0.63	0.60	0.63	0.60	XXX

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³ +Indicates RVUs are not used for Medicare payment.

20. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 ¹ / HCPCS ²	Mod	Status	Description	Physician work RVUs ³	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
31623		A	Dx Bronchoscope/ brush	3.07	3.33	3.34	1.25	2.82	0.27	6.67	6.68	4.59	6.16	OOO
31624		A	Dx Bronchoscope/ lavage ...	3.11	3.35	3.34	1.26	2.82	0.27	6.73	6.72	4.64	6.20	OOO
31643		A	Dx Bronchoscope/ catheter	3.50	1.73	2.94	1.23	2.81	0.66	5.89	7.10	5.39	6.97	OOO

CPT1 ¹ / HCPCS ²	Mod	Status	Description	Physician work RVUs ³	Non- facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal- practice RVUs	Non- facility total	Transitioned non- facility total	Facility total	Transitioned facility total	Global
35682		A	Composite bypass graft	7.20	2.81	7.92	2.74	7.90	2.75	12.76	17.87	12.69	17.85	ZZZ
35683		A	Composite bypass graft	8.50	3.32	8.05	3.22	8.02	2.75	14.57	19.30	14.47	19.27	ZZZ
94621		A	Plum stress/test complex	0.88	1.74	2.11	1.74	2.11	0.12	2.74	3.11	2.74	3.11	XXX
94621	26	A	Plum stress/test complex	0.88	0.27	0.64	0.27	0.64	0.04	1.19	1.56	1.19	1.56	XXX
94621	TC	A	Plum stress/test complex	0.00	1.47	1.47	1.47	1.47	0.08	1.55	1.55	1.55	1.55	XXX

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³ +Indicates RVUs are not used for Medicare payment.

21. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 ¹ / HCPCS ²	Mod	Status	Description	Physician work RVUs ³	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal- practice RVUs	Non-facility total	Transitioned facility total	Facility total	Transitioned facility total	Global
99321		A	Rest home visit, new patient.	0.71	0.38	0.40	NA	NA	0.02	1.11	1.13	NA	NA	XXX
99322		A	Rest home visit, new patient.	1.01	0.59	0.56	NA	NA	0.04	1.64	1.61	NA	NA	XXX
99323		A	Rest home visit, new patient.	1.28	0.74	0.78	NA	NA	0.05	2.07	2.11	NA	NA	XXX
99331		A	Rest home visit, estab pat.	0.60	0.38	0.32	NA	NA	0.02	1.00	0.94	NA	NA	XXX
99332		A	Rest home visit, estab pat.	0.80	0.48	0.41	NA	NA	0.02	1.30	1.23	NA	NA	XXX
99333		A	Rest home visit, estab pat.	1.00	0.58	0.51	NA	NA	0.02	1.60	1.53	NA	NA	XXX
99341		A	Home visit, new patient.	1.01	0.49	0.56	NA	NA	0.04	1.54	1.61	NA	NA	XXX
99342		A	Home visit, new patient.	1.52	0.74	0.67	NA	NA	0.04	2.30	2.23	NA	NA	XXX
99343		A	Home visit, new patient.	2.27	1.09	0.90	NA	NA	0.05	3.41	3.22	NA	NA	XXX
99344		A	Home visit, new patient.	3.03	1.35	1.03	NA	NA	0.07	4.45	4.13	NA	NA	XXX
99345		A	Home visit, new patient.	3.79	1.61	1.09	NA	NA	0.07	5.47	4.95	NA	NA	XXX
99347		A	Home visit, estab patient.	0.76	0.41	0.47	NA	NA	0.03	1.20	1.26	NA	NA	XXX
99348		A	Home visit, estab patient.	1.26	0.63	0.59	NA	NA	0.03	1.92	1.88	NA	NA	XXX
99349		A	Home visit, estab patient.	2.02	0.91	0.72	NA	NA	0.04	2.97	2.78	NA	NA	XXX
99350		A	Home visit estab patient.	3.03	1.24	0.93	NA	NA	0.05	4.32	4.01	NA	NA	XXX
99374		B	Home health care supervision.	+1.10	1.03	0.67	NA	NA	0.03	2.16	1.80	NA	NA	XXX
99375		A	Home health care supervision.	1.73	1.11	0.69	NA	NA	0.03	2.87	2.45	NA	NA	XXX

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³ +Indicates RVUs are not used for Medicare payment.

(Section 1848 of the Social Security Act (42 U.S.C. 1395w-4))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 30, 1999.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 99-11511 Filed 5-11-99; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 950427117-9123-06; I.D. 050599D]

RIN 0648-AH97

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

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

ACTION: Temporary rule.

SUMMARY: NMFS is closing, for a 2-week period, all inshore waters and offshore waters out to 10 nm (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR Part 80), bounded by 32° N. lat. and 33° N. lat. within the Leatherback conservation zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 7, 1999 through 11:59 p.m. (local time) on May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (727) 570-5312, or Barbara A. Schroeder (301) 713-1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS Pascagoula, MS laboratory by phone (228) 762-4591 or fax (228) 769-8699.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA

regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713 September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback conservation zone, NMFS may close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nautical miles (nm) (92.6 km) during repeated aerial surveys pursuant to § 223.206(d)(2)(iv)(A) through (C).

An aerial survey conducted on April 27, 1999, along the South Carolina coast documented 70 leatherback turtles over a total survey trackline of 327 nautical miles (nm) (606 km). The highest concentrations were noted in waters off the southern half of the state along two, parallel 46 nm (85.2 km) tracklines beginning at approximately 32°07' N. lat., 080°41' W. long. (offshore Hilton Head Island, SC) and ending at approximately 32°35' N. lat., 079°59' W. long. (offshore Kiawah Island, SC), where 35 leatherbacks were sighted along the trackline parallel to the coast at approximately 1.5 nm (2.8 km), and 17 leatherbacks were sighted along the trackline paralleling the coast at approximately 3.0 nm (5.6 km). A survey along the same tracklines on May 3, 1999, documented 1 leatherback on the 1.5 nm (2.8 km) and 11 leatherbacks on the 3.0 nm (5.6 km) from shore tracklines. The May 3 survey also observed 55 trawlers operating along the South Carolina coast. Of those 55 trawlers, 52 were located south of Cape Romain, within shrimp fishery statistical zone 32. Thirty-four trawlers were sighted between Hilton Head and Kiawah Islands, along the portion of trackline with the highest concentrations of leatherback. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), has determined that all inshore waters and

offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 33° N. lat., within the Leatherback conservation zone are closed to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape.

The regulations at 50 CFR 223.206(d)(2)(iv) also state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570-5312 for updated area closure information.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide emergency protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zone 32. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Furthermore,

notice and opportunity to comment on this action was provided through the proposed rule establishing these actions (60 FR 25663, May 12, 1995). For these reasons, good cause exists under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. As stated above, this closure has been announced on the NOAA weather radio, in newspapers, and other media,

allowing time for the shrimp fishery to comply with this rule.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and

the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see ADDRESSES).

Dated: May 7, 1999.

Penelope D. Dalton,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 99-11985 Filed 5-7-99; 4:48 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 64, No. 91

Wednesday, May 12, 1999

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB-99-02]

Tobacco Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to revise the regulations for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. The revision would add a special factor to the grademark to identify any lots of baled flue-cured tobacco not opened for inspection. This would allow a distinction between lots that are opened for inspection and lots that are not opened for inspection. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses. To take into account the marketing of bales, a revision would also be necessary in the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco.

DATES: Comments are due on or before June 11, 1999.

ADDRESSES: Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, PO Box 96456, Washington, DC 20090-6456. Comments will be made available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, PO Box 96456, Washington, DC 20090-6456. Telephone (202) 205-0567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend regulations under

subpart B, regulations; subpart C, Standards, and subpart G, Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

This proposal was based on a research project conducted by AMS and recommendations made by the industry to revise the regulations to better adapt flue-cured bale inspection into the current marketing system. On December 30, 1998, the Flue-Cured Tobacco Advisory Committee (FCTAC) met and reviewed recommendations from the tobacco industry on the flue-cured bale as an alternative packaging method. The recommendations made by the FCTAC have been included in this proposal for regulatory action. The proposed revision would add a special factor to the grademark to identify lots of flue-cured tobacco not opened for inspection, establish dimension and spacing requirements for marketing display of bales, and revise the poundage adjustment for a warehouse selling in excess of the sales schedule.

Flue-cured tobacco has been traditionally marketed in a sheet with a maximum weight of 275 pounds. The dimensions of the sheet is 8 feet x 8 feet and is composed of burlap or other synthetic materials. The tobacco is arranged in a circular pattern on the sheet and the corners are tied diagonally for handling purposes. The lot of sheeted tobacco is approximately 4 feet in diameter.

The tobacco industry has experimented with the bale as an alternative packaging method for marketing flue-cured tobacco during the past 3 years. This alternative package is a 42-inch wide x 42-inch high x 40-inch long bale weighing approximately 750 pounds. The bale is compressed together and bound by metal wires. The FCTAC recommended bale dimensions of 42 inches x 42 inches x 40 inches.

The current regulations under the Tobacco Inspection Act do not specifically restrict baling as a packaging method for flue-cured tobacco. However, the current regulations do require that an official grade determination be based on a thorough examination of a lot of

tobacco. A minimum of three locations within a lot is required to be sampled to show the range of the entire lot. However, the buying segment of the tobacco industry has opposed opening bales citing integrity issues. Without the ability to examine the interior of the bale for such conditions as doubtful keeping order (high moisture level), damaged tobacco, or nesting (inferior quality tobacco), an accurate grade determination could not be assured.

During the 1998 flue-cured marketing season, Tobacco Programs conducted a research project on marketing flue-cured tobacco in bales. The research focused on the grade and condition of flue-cured baled tobacco from the beginning to the end of the marketing process. Research data was collected at the farm level as the tobacco was compressed into a bale, at the auction warehouse before and during the day of sale, and at the processing facility as the bale was disassembled.

The purpose of the research project was to determine if significant variations existed between the exterior and interior of the flue-cured bale that would impact the official grade standards. The findings indicated there was no significant variation in grade and condition observed. However, USDA inspectors were present at the farm to observe tobacco being placed into a bale and the potential to conceal inferior quality tobacco was eliminated. Furthermore, the practice of nesting (concealing inferior quality tobacco) has been a problem in the past and it is expected that this problem will be present in the future. Without opening a bale and examining interiors, an accurate grade determination is not assured. Since flue-cured tobacco is and will continue to be marketed in both the sheeted and bale packages, we believe that a distinction needs to be made between lots that are not opened for inspection. Making such a distinction would contribute to grading accuracy and assist in maintaining program integrity. In the event that a problem exists regarding the quality or condition of the interior of the bale, a buyer would have to resolve the matter with the producer or the commissioned warehouse operator.

Accordingly, the Department is proposing to revise the regulations for flue-cured tobacco to more accurately describe tobacco as it appears at the

marketplace. This proposal would revise the current tobacco regulations to allow the inspection of bales of flue-cured tobacco without the bale being opened for inspection. Further, this proposal also provides that the inspection of unopened bales would be distinguished from opened bales by adding the special factor "B" to the grademark.

All lots of tobacco that are subject to mandatory inspection on a designated market should be made accessible to perform grading activities. The recommendation was made that each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors be placed in rows end to end so the open side of the bales are facing the aisles. Also, a minimum space of 30 inches between the rows with the distance between lots of tobacco within the row shall be no less than 12 inches between immediately adjacent lots was recommended. These two spacing proposals would promote the orderly marketing of baled tobacco by providing a uniform marketing display in the warehouse. This would also provide accessibility for inspection of the bales.

An additional proposed revision would increase the poundage adjustment of 2,500 pounds by doubling the poundage amount for a warehouse selling in excess of the daily sales schedule. For example, 2,500 pounds would become 5,000 pounds and 5,000 pounds would become 10,000 pounds. The same would be applicable to undesignated producer tobacco, with 500 pounds becoming 1,000 pounds and 1,000 pounds becoming 2,000 pounds. This action is being proposed because the bale weight is approximately three times as much as tobacco marketed in sheets. This would give the farmers a chance to complete selling their lots of tobacco when the daily sales schedule has been depleted. This proposal should meet industry needs for marketing tobacco in bales.

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12866, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provision of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. There are approximately 190 tobacco warehouses and approximately 30,000 producers. The Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposal would add a special factor to the grademark to identify any lots of baled flue-cured tobacco not opened for inspection. This change would provide a distinction between lots that are opened for inspection and lots that are not opened for inspection. Accordingly, this change would more accurately describe tobacco as it appears in the marketplace and would assist in maintaining program integrity. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses and would provide accessibility for inspection of the bales. A revision would also be made to the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco in order to take into account the marketing of bales. These changes would apply equally to both small and large entities and they would take into account the marketing of flue-cured tobacco as it presently appears in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, PO Box 96456, Washington, DC 20090-6456. A 30 day comment period is provided for comments. This period is deemed appropriate because the flue-cured tobacco marketing season is expected to begin in mid-July and these changes, if adopted, should be made effective as soon as possible.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 29 be amended as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for part 29, subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. A new § 29.75b is added to read as follows:

§ 29.75 Display of baled flue-cured tobacco on auction warehouse floors in designated markets.

Each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors shall have a minimum of 30 inches from side to side between the rows with open side of the bale facing the aisles. Distance between lots of baled tobacco within the row shall be no less than 12 inches between immediately adjacent lots.

Subpart C—Standards

3. The authority citation for part 29, subpart C continues to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

§ 29.1059 [Amended]

4. In § 29.1059, the words "and 29.))" are removed and the words "29, and 30.))" are added in their place.

5. Section 29.1109 is revised to read as follows:

§ 29.1109 Rule 3.

In drawing an official sample from a hogshead or other package of tobacco, three or more breaks shall be made at such points and in such manner as the inspector or sampler may find necessary to determine the kinds of tobacco and the percentage of each kind contained in the lot. All breaks shall be made so that the tobacco contained in the center of the package is visible to the sampler, except for baled tobacco that is not opened for inspection (see Rule 30). Tobacco shall be drawn from at least three breaks from which a representative sample shall be selected. The sample shall include tobacco of each different group, quality, color, length, and kind found in the lot in proportion to the quantities of each contained in the lot.

6. Section 29.1129 is revised to read as follows:

§ 29.1129 Rule 23.

Tobacco shall be designated by the grademark "No-G," when it is offtype, semicured, fire-killed, smoked, oxidized over 10 percent, has an odor foreign to the type, or is packed in bales which are

not approximately 42 inches wide x 42 inches high x 40 inches long .

7. A new § 29.1136 is added to read as follows:

§ 29.1136 Rule 30.

Any lot of baled tobacco that is not opened for inspection but which otherwise meets the specifications of a grade shall be treated as a special factor grade by placing the special factor "B" after the grademark.

8. In § 29.1181, the undesignated text immediately following table "1 Grade of Scrap", is revised to read as follows:

§ 29.1181 Summary of standard grades.

* * * * *

Special factors "U" (unsound), "W" (doubtful-keeping order), "S" (strip), and "M" (mixed) may be applied to all grades. The special factors "dirt" or "sand" may be applied to any grade in the Primings group, including first quality Nondescript from the Primings group. The special factor "B" may be applied to all bales to denote tobacco not opened for inspection. Tobacco not covered by the standard grades is designated "No-G," "No-G-F," or "No-G-Nested."

Subpart G—Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets

9. The authority citation for part 29, subpart G continues to read as follows:

Authority: Tobacco Inspection Act, 49 Stat. 731 (7 U.S.C. 511 et seq.); Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended (15 U.S.C. 714 et seq.); sec. 213, Pub. L. 98-180, 97 Stat. 1149 (7 U.S.C. 1421); 49 Stat. 731 (7 U.S.C. 511 et seq.), unless otherwise noted.

10. In § 29.9406, paragraphs (c)(1), (c)(2), (c)(3), and (d) are revised to read as follows:

§ 29.9406 Failure of warehouse to comply with opening and selling schedule.

* * * * *

(c) * * *

(1) If the excess is 5,000 pounds or less of designated producer tobacco, the adjustment in producer sales opportunity shall be one pound for each pound of excess; sales in excess of 5,000 pounds shall be a violation of the sales schedule and the adjustment for the first violation shall be 5,000 pounds plus the larger of 3 pounds for each pound in excess of 5,000 pounds or 5,000 pounds; for the second violation, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 or 10,000 pounds; and for the third and subsequent violations, the

adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 pounds or 50 percent of a schedule day's sales opportunity.

(2) If the excess is 1,000 pounds or less of undesignated producer tobacco, the adjustment in producers sales opportunity is one pound for each pound of excess; if the excess is larger than 1,000 pounds, the adjustment is 1,000 pounds plus the larger of 3 pounds for each pound in excess of 1,000 or 2,000 pounds.

(3) If the excess is designated producer tobacco that is not eligible for sales at the warehouse on the day of the sale, the adjustment in producers sales opportunity for the first violation is the larger of 3 pounds for each pound in excess or 5,000 pounds, and for the second and succeeding violations, the larger of 5 pounds for each pound in excess or 10,000 pounds.

(d) If, on any sales day, a warehouse does not sell the full quantity of designated or undesignated tobacco authorized to be sold at such warehouse, the designated or undesignated sales opportunity at such warehouse on the next immediate sales day shall automatically be increased by the unsold quantity except that no such increase in sales opportunity shall exceed 5,000 pounds for designated tobacco or 500 pounds for undesignated tobacco.

Dated: May 6, 1999.

Enrique E. Figueroa, Administrator, Agricultural Marketing Service.

[FR Doc. 99-11976 Filed 5-11-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563-AB70

General Administrative Regulations; Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-Controlling Entities

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend its General Administrative Regulations, to allow approved insurance providers to apply to the Federal Crop Insurance Corporation (FCIC) for authority to reduce the premium charged producers

in accordance with section 508(e)(3) of the Federal Crop Insurance Act (Act), as amended, and to provide the limitations and requirements applicable to the payment of rebates, dividends, and patronage refunds to insureds, and payments to insured-owned and record-controlling entities.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business July 12, 1999 and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before July 12, 1999.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Reinsurance Services Division, Risk Management Agency, Stop 0804, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC. 20250-0804. A copy of each response will be available for public inspection and copying from 8 a.m. to 4:30 p.m., EDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Cost-Benefit Analysis to the General Administrative Regulations, contact E. Heyward Baker, Director, Reinsurance Services Division, Risk Management Agency, at the Washington, DC, address listed above, telephone (202) 720-4286.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant and, therefore, it has been reviewed by OMB.

Cost-Benefit Analysis

A cost-benefit analysis has been completed and is available to interested parties at the Washington, DC address listed above. In summary, the analysis found that: (1) The anti-rebating and record-controlling provisions will promote actuarial soundness of the crop insurance program; (2) premium reductions are more likely to be offered to large premium policy holders than small; (3) the proposed provisions authorize FCIC/RMA management to deny permission to implement premium reductions if there would be a reduction in the overall system's ability to serve all farmers; and (4) the authority and basic requirements for premium reductions are specified in the Act. In order to avoid any adverse impact on small farmers or on the crop insurance program itself, §§ 400.755(b)(1) to (10) provide grounds for FCIC/RMA management to reject premium

reduction applications. Based on the cost benefit analysis and the requirements of the Act FCIC finds that this regulation is in the best interest of the overall crop insurance program and should be proposed in the **Federal Register** for public review and comment.

Paperwork Reduction Act of 1995

In accordance with section 3507 (j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection or recordkeeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public comment concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission responses).

Title: General Administrative Regulations; Premium reductions; payment of rebates, dividends, and patronage refunds; and payments to insured-owned and record-controlling entities.

Abstract: A new program is being proposed that will allow approved insurance providers to apply to FCIC for authority to reduce the premium charged to producers in accordance with the Federal Crop Insurance Act (Act), as amended, and to provide the limitation and procedures established by FCIC.

Purpose: The purpose of this proposed rule is to provide guidelines to

approved insurance providers and their agents, employees, and contractors regarding prohibited and permitted practices with respect to premium reductions; payment of rebates, dividends, and patronage refunds; and payments to insured-owned and record-controlling entities.

Burden Statement: The information that FCIC collects on the requested application as defined in § 400.751 of this regulation, will be used to determine if the premium charged to producers may be reduced. The burden for this information collection assumes that approximately 18 reinsured companies will read this regulation. It is further assumed that all 18 reinsured companies will eventually complete an application to obtain written approval from RMA of premium reduction plans.

Estimate of Burden: We estimate it will take 18 reinsured companies 2 hours to read the regulation for a total of 36 hours. In addition, we also estimate it will take them 48 hours each to apply to the program twice a year.

Respondents: 18 reinsured companies.

Estimated annual number of respondents: 18.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 36.

Estimated total annual burden on respondents: The total public burden for this proposed rule is estimated at 900 hours.

Recordkeeping Requirements: FCIC requires records to be kept for three years, but all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to recordkeeping.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW, Washington, DC 20250.

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 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 UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 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 rule provides the guidelines to be used by all approved insurance providers or any other applicant and FCIC in the application, review, and approval of plans to reduce the premiums charged producers. Any submission is entirely voluntary and the guidelines contained in this rule does not impact small entities to a greater extent than 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 12372

This program is not subject to the provisions of Executive Order 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 12988

This rule has been reviewed in accordance with Executive Order 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 or action before the Board of Contract Appeals, whichever is applicable, must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an

Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Risk Management Agency (RMA) is charged with the administration of the crop insurance programs for FCIC. As such, RMA is responsible for maintaining an effective, orderly, and efficient crop insurance marketplace, including a delivery system capable of selling and servicing FCIC's crop insurance policies and other risk management products reinsured by FCIC to all producers in a manner that does not unfairly discriminate among producers or insurance companies. The delivery system must support efforts to operate in an actuarially sound manner, to assure program integrity, and to avoid and prevent waste, fraud, and abuse.

Premium reductions; payment of rebates, dividends, and patronage refunds; and payments to insured-owned and record-controlling entities, if improperly made, may have an adverse effect on FCIC's ability to devise and establish an effective and efficient crop insurance marketplace so as to best meet the risk management needs of producers and its responsibility to protect the program and its participants. Rebates are illegal in most States for those lines of insurance regulated by State Departments of Insurance for several reasons, the most important being the destructive impact that they can have on delivery systems and on competition. Use of rebates could negatively impact the smaller insurance companies because they would not be able to provide the same economic incentives that larger companies could provide and, as a result, they may unfairly lose market share. FCIC relies on a healthy and competitive delivery system to assure that all producers are afforded the best quality service, regardless of the size of the farm or the amount of premium earned on the policy. The Standard Reinsurance Agreement in effect for the 1998 reinsurance year prohibits rebates.

Dividends and patronage refunds are normal business practices for mutual, cooperative, and certain other insurance companies as well as to certain kinds of cooperatives such as insurance-buying groups and certain agricultural lenders. While the use of dividends and patronage refunds are generally benign, they can also be used to disguise rebates if they are guaranteed in advance or they are made contingent upon the continued purchase of crop insurance policies. When they are disguised rebates, they have the potential to impact negatively on the delivery

system, competition, and the quality of service afforded producers. This rule in part provides procedures and limitations on providing such dividends or patronage refunds.

The use of insured-owned entities in marketing also embodies the potential for disguised rebates. There are instances where associations or cooperatives have contracted with insurance companies to provide a list of members and a product endorsement in exchange for a sum of money. In these cases, the insured may have an interest in the association or cooperative and the insured-owned entity may have the capacity to reward those producers who purchase insurance. Such inducements may be prohibited rebates. This rule is proposed to ensure that any funds paid to the insured-owned entity are used to the benefit of all members and not only those who purchase insurance.

The use of record-controlling entities presents different potential problems. Here the potential impact is not on the delivery system and competition but on FCIC's ability to achieve actuarial soundness and protect program integrity. Record-controlling entities are processors, packers, etc. that maintain the production records for the producer and also have an interest in the insurance policy as the insured or assignee of the policy. FCIC uses production records and related crop production information from storage facilities, packers, processors, and marketers to design insurance products, set premium rates, establish yield guarantees for individual producers through the actual production history program, and to determine the production to count when there is a claim. There are also cases where the record-controlling entity is recruited as an agent and paid a commission. This creates, at the least, a potential conflict of interest and may jeopardize actuarial soundness and program integrity. This rule provides the conditions under which record-controlling entities can participate in the Federal crop insurance program.

Premium reductions for FCIC-reinsured policies are specifically authorized by section 508(e)(3) of the Act, which specifically authorizes reinsured companies to reduce the amount of producer paid premiums if they can demonstrate that they can deliver the crop insurance program for less than the amount of administrative and operating expense reimbursement they receive under the Act. This rule establishes the procedures and limitations required to implement premium reductions.

List of Subjects in 7 CFR part 400

Administrative practice and procedure, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400 by adding subpart W, effective for the 1999 and succeeding reinsurance years, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart W—Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-controlling Entities for the 1999 and Subsequent Crop Years

Sec.

- 400.750 Basis, purpose, and applicability.
- 400.751 Definitions.
- 400.752 Payment of Rebates.
- 400.753 Dividends and Patronage Refunds.
- 400.754 Payments to Insured-Owned and Record-Controlling Entities.
- 400.755 Reductions in premiums.
- 400.756 Records and Review.
- 400.757 Sanctions.

Authority: 7 U.S.C. 1506(1), 1506(p), 1508(e)(3)

Subpart W—Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-owned and Record-controlling Entities for the 1999 and Subsequent Crop Years

§ 400.750 Basis, purpose, and applicability.

(a) There is a growing trend to use marketing techniques that compensate or reward insureds who obtain crop insurance in order to increase the amount of premium written and the potential profitability of the reinsured companies. This rule is intended to regulate such conduct to protect the integrity of the crop insurance program.

(b) Section 508(e)(3) of the Act, as amended, authorizes FCIC to approve applications by approved insurance providers to reduce premiums payable by insureds when the private insurance provider is able to demonstrate that it can sell and service the crop insurance program, in accordance with the Act, the Standard Reinsurance Agreement, and the applicable regulations, directives, bulletins and procedures, for less than the amount paid by FCIC to the approved insurance provider for administrative and operating expenses. This subpart provides the timing of the application, the material to be included,

and describes FCIC's approval process for such application.

§ 400.751 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Application. A written request to RMA for authority to reduce producer paid premiums

Approved insurance provider. A private insurance company that has been approved by FCIC to sell and service crop insurance policies reinsured by FCIC under the Act.

Cost-accounting statement. A listing of all of the approved insurance provider's administrative and operating costs related to the delivery of the Federal crop insurance program, prepared in a manner that permits comparison with the Expense Exhibit submitted to RMA with the Plan of Operation.

Covered person. An approved insurance provider; any employee, contractor, agent, broker, or solicitor of such approved insurance provider; any agency representing the approved insurance provider; any owner, employer or controller of any such agency or contractor; any spouse or family member residing in the same household as any such, employee, contractor, agent, broker, solicitor, owner, or controller; or any affiliate of any such approved insurance provider, agency, or contractor.

Dividend. Profits or earnings divided among the owners or shareholders in proportion to their ownership share.

Efficiency. A measurable monetary savings realized by an approved insurance provider from changes to the compensation paid to its owners, agents, or employees, or from changes to the administrative and operating procedures that it employs in selling or servicing FCIC-reinsured policies in accordance with the Act, the Standard Reinsurance Agreement, and the applicable regulations, directives, bulletins and procedures. Efficiency does not include underwriting profits earned on such policies, or investment returns.

Entity. Any person, whether incorporated or not, including associations, cooperatives, mutuals, corporations, and similar business organizations that provide any good or service to insured producers.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Insured. The named person shown on the properly completed application for insurance that has been accepted by an approved insurance provider and any

person with a substantial beneficial interest in the insured.

Insured-owned entity. Any entity that is at least 25 percent owned or controlled by insureds.

Insured's premium. The portion of the FCIC-approved insurance premium for the risk of loss that the insured must pay.

Patronage refund. A payment to an entity's clients in proportion to the volume of business that each did with the entity or the amount of profit generated from that business.

Person. Any individual or legal entity.

Premium reduction. Payment of a portion of the insured's premium by the approved insurance provider in accordance with section 508(e)(3) of the Act and these regulations.

Rebate. The giving or paying, either directly or indirectly, by a covered person of anything of value to an insured or applicant, or a person affiliated with an insured or applicant, such that the gift or payment may reasonably be construed by RMA as intended to induce the insured or applicant to obtain or maintain insurance coverage with or through the covered person.

Record-controlling entity. Any entity, or its employee, agent, contractor, or affiliate, that produces or controls the crop production records used to establish the amount of the insurance coverage or the amount of production to count in case of loss on an FCIC-reinsured crop insurance policy, who also has an interest in the insurance policy as the insured or assignee of the policy.

RMA. The Risk Management Agency, an agency of the United States Department of Agriculture that administers the crop insurance program for FCIC.

Sales closing date. The final date by which an FCIC-reinsured policy may be purchased.

Small Producer. The producer of an insurable crop, which if insured at 65 percent of the recorded or appraised average yield indemnified at 100 percent of the market price, or an equivalent coverage, would have earned a premium, including premium subsidy but excluding administrative and operating subsidy, of no more than \$500.

§ 400.752 Prohibited practices.

(a) Rebating in any form is a prohibited practice. Any covered person who provides a rebate to any insured or applicant will be subject to the sanction provisions in § 400.757.

(b) No crop insurance policy will be eligible for FCIC reinsurance, premium

subsidy, or administrative and operating subsidy if any covered person makes any of the following payments to the insured producer:

- (1) Rebate;
- (2) Premium reduction, except with the prior approval of RMA; and
- (3) Dividend or patronage refund, if such dividend or refund is promised to the applicant or insured, or is contingent upon the insured maintaining coverage with or through the entity;

(c) No crop insurance policy will be eligible for FCIC reinsurance, premium subsidy, or administrative and operating subsidy if a covered person makes any payment to:

(1) A record-controlling entity or to any employee, agent, or contractor of such an entity, or any entity controlled by such an entity, except as specified in paragraph (d) of this section; or

(2) An insured-owned entity, except an insurance company, or to any employee, agent, or contractor of such an entity, or any entity controlled by such an entity, when the entity participates in or effects any control over the sale of policies and the establishment or verification of the yields upon which insurance guarantees are based or claims for indemnities are made, except as specified in paragraph (d) of this section.

(d) Crop insurance policies specified in paragraph (b)(1) and (2) of this section will be eligible for FCIC reinsurance, premium subsidy, and administrative and operating subsidy when the specified payments:

- (1) Are approved in writing by RMA;
- (2) Are not based on the amount of FCIC-reinsured crop insurance business sold through the entity; and

(3) The approved insurance provider presents a plan, accepted by RMA, that demonstrates how, in cases involving record-controlling entities, the integrity of the crop production records used to establish the amount of the insurance coverage or the amount of production to count in case of loss on an FCIC-reinsured crop insurance policy, will be protected.

§ 400.753 Dividends and patronage refunds.

(a) Dividends and patronage refunds are permitted unless:

(1) A dividend or patronage refund is promised or guaranteed to be paid to the insured or applicant;

(2) The payment of the dividend or patronage refund is contingent upon the insured or applicant obtaining or maintaining coverage with or through a specific covered person; or

(3) The payment of the dividend, crop insurance, or patronage refund is made only to insureds.

(b) Prior to paying any dividends or patronage refunds to insureds or applicants, the covered person must certify that such payments do not violate paragraph (a) of this section. The covered person making such payments will make those financial records applicable to such payments available for inspection at the request of RMA.

(c) Payment of any dividend or patronage refund in violation of this section will result in the imposition of sanctions in accordance with § 400.757.

§ 400.754 Payments to insured-owned and record-controlling entities.

(a) Covered persons may not enter into agreements with insured-owned entities to purchase a list of producers affiliated with the insured-owned entity or an endorsement of the covered person by the insured-owned entity except as specified in this section.

(1) The covered person must request approval from FCIC in writing in accordance with paragraph (d) of this section.

(2) Covered persons may not execute agreements or make any payments to insured-owned entities until receiving written approval from FCIC.

(3) The insured-owned entity must agree in writing not to make any payments or provide any benefits to any insured or applicant affiliated with the insured-owned entity that is contingent upon the insured or applicant obtaining or maintaining insurance coverage with or through a covered person.

(4) The insured-owned entity must agree in writing that all payments made by the covered person will be deposited in the general fund to be used for the benefit of all producers affiliated with the insured-owned entity equally or in proportion to the persons interest in the insured-owned entity, as applicable.

(5) The amount of the covered persons' payment to the insured-owned entity must be a fixed amount and must not be based on the number of crop insurance policies sold to producers affiliated with the insured-owned entity or the volume of premium written.

(b) For any other type of agreement between covered persons and insured-owned entities, the covered person must comply with all the requirements of this section.

(c) A covered person is prohibited from providing any crop insurance or making any payment to a record-controlling entity unless:

(1) The covered person or the record-controlling entity provides a written request for approval for the record-

controlling entity to obtain insurance or receive a payment from FCIC;

(2) The covered person or the record-controlling entity obtains the written approval from FCIC; and

(3) The covered person agrees in writing to appraise any crop under the control of the record-controlling entity and insured with or through the covered person not less than 5 days prior to harvest.

(d) All requests for approval under this section must comply with the following:

(1) All requests for approval must be received not later than 60 days prior to the date an agreement between covered persons and insured-owned entities is to be effective or, for insurance or payments for record-controlling entities, the sales closing date or payment date (requests received after the deadline will be considered for the next crop year unless the request is withdrawn by the approved insurance provider or unless FCIC otherwise agrees in writing);

(2) Each request must include the following material and address each of the following items:

(i) The name of the covered person and the person who may be contacted for further information regarding the request for approval;

(ii) A detailed description of the amounts to be paid by the covered persons and the goods or services to be provided by the insured-owned entity or record-controlling entity; and

(iii) Any other information required by FCIC.

(e) Entering into any agreement, providing insurance or making any payment under this section without the prior written consent of FCIC will result in the imposition of sanctions in accordance with § 400.757.

(f) Approval under this section will only be valid for the period specified by FCIC in its written approval.

§ 400.755 Reductions in premiums.

(a) Approved insurance providers may obtain written approval of premium reduction plans by submitting an application to RMA as follows:

(1) Applications must be received not later than 120 days before the first sales closing date on any crop for which a premium reduction is requested.

Applications filed less than 120 days before the sales closing date will be considered for the next crop year unless the application is withdrawn by the approved insurance provider or unless FCIC otherwise agrees in writing.

(2) The application under this section must be sent to the Director, Reinsurance Services Division, USDA/RMA/Stop 0804, 1400 Independence

Avenue, SW, Washington, DC 20250-0804.

(3) Each application must include the following:

(i) The name of the approved insurance provider, the person who may be contacted for further information regarding the application, and the person who will be responsible for administration of the premium reduction;

(ii) The crops, insurance plans, the states or counties, and all other eligibility criteria used to determine which insureds will be offered the premium reduction;

(iii) An estimate of the number of producers who will be affected, the crops, counties, and states affected, and the projected total dollar amount of the reduction;

(iv) The first crop year for which the premium reduction is proposed to be offered;

(v) A detailed description of the changes in administrative and operating procedures that produce the efficiency and a detailed cost-accounting statement verifying the existence and the amount of the efficiency (Both statements must be certified by the person authorized to sign the Standard Reinsurance Agreement for the approved insurance provider. The cost-accounting statement must include historical data that permits a comparison of administrative and operating costs before and after the introduction of the new procedures. Estimates may be supplied whenever the procedures have not yet been implemented or have not been implemented long enough to permit the proper collection of cost accounting data);

(vi) A description and an example as to how the approved insurance provider will calculate the premium reduction and present it to eligible insureds;

(vii) A description of those features of the proposed premium reduction plan that will assure that it will not discriminate against small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, or minority producers.

(viii) A narrative statement explaining how the application satisfies all applicable approval criteria specified in § 400.755; and

(ix) Any other information that the approved insurance provider wishes to submit or that is required by FCIC.

(b) Compliance with all the following criteria is required for FCIC's approval:

(1) All required information must be timely submitted;

(2) There must not be a reduction in service to policyholders;

(3) There must not be a reduction in training and supervising of agents, loss adjusters, or underwriting and quality assurance personnel;

(4) There must not be a reduction in program integrity or an adverse affect on actuarial soundness;

(5) There must not be a reduction in the total delivery system's ability to serve all producers, including small producers, limited resource farmers as defined in the Basic Provisions, 7 CFR 457.8, minority producers, and producers located in areas with small volumes of crop insurance business;

(6) There must not be a reduction in the total delivery system's ability to provide risk management education to all producers;

(7) The efficiency must be measurable in dollar terms;

(8) RMA must be able to verify the existence and amount of the efficiency and that it is derived from the administrative and operating subsidy and not any expected underwriting gain;

(9) The efficiency must not derive from marketing or underwriting practices that are unfairly discriminatory; such as discriminating among producers on the basis of farm size or premium amount; and

(10) The premium reduction must not jeopardize or diminish the financial condition of the approved insurance provider.

(c) Each application will be reviewed to determine if all necessary documentation is included. FCIC may require changes or adjustments to the application consistent with the Act and FCIC's regulations.

(d) An application to reduce premium will not be approved if FCIC determines that it will discriminate against small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, or minority producers.

(1) If the insurance provider proposes to offer the premium reduction to an identifiable group of producers or in a specific geographical area, then the premium reduction must be made available to all producers in that group or area, regardless of the amount of premium to be earned on the producer's policy.

(2) No group or geographical area may be defined in such a manner as to exclude small producers, limited resource farmers, or minority producers.

(e) The Director of the Reinsurance Services Division will notify the approved insurance provider of the action taken.

(1) If the application is disapproved, the approved insurance provider:

(i) Will be notified of the reason for disapproval and will be allowed to amend the application in an effort to obtain FCIC's approval. If the approved insurance provider amends the application, the review process starts again and it may not be possible to approve the application in time to have it applicable for the crop year for which such application was submitted; and

(ii) May request reconsideration of the decision with the Deputy Administrator of Insurance Services within 30 days of disapproval. Such request must provide a detailed narrative of the basis for reconsideration.

(2) Approval is solely within the discretion of FCIC.

(3) An approved application may be implemented by the approved insurance provider by the next sales closing date for the affected crop after approval by RMA.

(4) Approved applications for premium reduction will only be valid for the period specified by RMA.

(5) FCIC may rescind any approval at any time that it determines that the requirements imposed by this rule are no longer satisfied or if a change in the Act necessitates rescission. In such case, rescission will not take effect earlier than the date of FCIC's written notice to the approved insurance provider.

(6) The approved insurance provider must report all changes causing a material impact upon a previously-approved application to the Director of the Reinsurance Services Division.

§ 400.756. Records and Review.

At any time after approval, RMA may conduct a review or audit of any action approved under this subpart and require additional information or access to records pertaining to such actions. Failure to comply with this section will result in the impositions of sanctions in accordance with § 400.757.

§ 400.757 Sanctions.

(a) No crop insurance policy in violation of this subpart will be eligible for reinsurance, premium subsidy, or administrative and operating expenses. If reinsurance, premium subsidy, or administrative and operating expenses have been paid for such policy, they must be repaid to FCIC.

(b) Approved insurance providers are responsible for the conduct of all of their covered persons. If such covered person violates any provision in this subpart, the approved insurance provider will be held strictly liable.

Signed in Washington, DC, on May 4, 1999.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 99-11759 Filed 5-11-99; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chap. I

[Docket No. 99-05]

Community Bank-Focused Regulation Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is undertaking a review of its regulations with a view toward identifying rules that may impose disproportionate or unnecessary burden on community banks. This advance notice of proposed rulemaking (ANPR) identifies several parts of the OCC's regulations that are already under review, requests comment on changes that could be made to these regulations, and solicits suggestions for improvements in other areas that would be helpful to community banks. The intended effect of this action is to identify areas where the OCC could reduce unnecessary burden on community banks without impairing their safety and soundness.

DATES: Comments must be received by July 12, 1999.

ADDRESSES: Please direct your comments to: Docket No. 99-05, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219. You can inspect and photocopy all comments received at that address. In addition, you may send comments by facsimile transmission to FAX number (202) 874-5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, or Heidi Thomas, Senior Attorney, Legislative and Regulatory Activities, at (202) 874-5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC supervises over 2,400 national banks that vary widely in size, business strategy, complexity, and

geographic diversity. The OCC has a strong commitment to ensure that our regulations encourage, rather than impede, national banks' efficiency and competitiveness, consistent with safety and soundness. Toward that end, we continually reevaluate our rules in order to identify and eliminate requirements that impose burdens on banks that are not necessary to maintain safety and soundness, promote fair access to financial services for consumers, or accomplish the OCC's other statutory responsibilities.

In 1996, the OCC completed a three-year, comprehensive effort to review and revise all of its regulations. The results of this effort, which was called the Regulation Review Program (Program), were positive. Most of the bankers, trade group representatives, banking lawyers, and consumer representatives whom the OCC asked about the effects of the Program thought that, on balance, it had been a success. While some of the regulatory changes made pursuant to the Program were designed to benefit community banks, the Program did not have the community bank charter as a particular focus.

The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. For example, many community banks have more direct "hands-on" oversight by senior management and smaller spans of operations and controls such that less complex risk-management or compliance systems may be appropriate. Differences between community banks and larger banks in operational structure and focus may result in inefficient or uneven application of regulatory requirements. Therefore, we believe that it is appropriate to take a fresh look at our regulations with the community bank perspective in mind.¹

Specifically, the OCC is considering further changes to our regulations that would take into account the impact the rules have on community banks' resources, as well as other factors that bear on community banks' operations. For example, community banks typically have smaller, less specialized staffs than larger banks, so the burden of complying with complex regulations is proportionately higher. The purpose

¹ The OCC already recognizes and incorporates into its supervisory approach the distinctions between large banks and community banks. The OCC has, for example, developed approaches to examination and supervision that are appropriate to each charter type. See, e.g., *Comptroller's Handbook*, Community Bank Supervision (August 1998), Large Bank Supervision (July 1998). See also *id.*, Community Bank Fiduciary Activities Supervision (December 1998).

of our community bank-focused regulation review is to eliminate or modify regulatory requirements that impose unnecessary burden. In addition, we are seeking to identify regulations as to which it may be appropriate to develop alternative, differential regulatory approaches that will achieve the OCC's goals while minimizing burden on community banks.

This advance notice describes four areas of regulation that the OCC is already reviewing. In those areas, commenters are invited to make specific suggestions for change. Depending on the results of the OCC's own review and the suggestions made by commenters, we will then consider proposing specific revisions to our rules for comment. In addition, commenters on this advance notice are invited to suggest other regulations that could be modified in ways helpful to community banks.

A few of the OCC's regulations distinguish among banks based on asset-size categories and apply different requirements to smaller banks. For example, 12 CFR part 25, the regulation implementing the Community Reinvestment Act (CRA), provides for alternative means of compliance for banks with less than \$250 million in assets. The OCC does not have a standard, generally applicable definition of "community bank," however. We invite comment on whether to adopt such a definition for purposes of this regulation review. If so, should the definition be based primarily on asset size, and what should the asset threshold be? Should the OCC consider factors other than asset size, such as whether the bank is the sole provider of banking services in a community, regardless of asset size?

Areas Currently Under Review

Part 5—Corporate Activities and Transactions

Community banks, like larger national banks, routinely seek OCC approval for different types of corporate transactions. Recent amendments to the OCC's operating subsidiary rule reduced burden by grouping procedures for OCC approval of operating subsidiary activities into different categories based upon the novelty of the activity and level of risk it presents. The required approval procedures vary depending upon the group in which the activity is placed. For example, qualifying national banks need only file a simple after-the-fact notice for certain, so-called "plain vanilla" activities (e.g., providing accounting, data processing, and other

business services for the bank or its affiliates). A 30-day review under an expedited filing procedure may be available for more complex operating subsidiary activities. See 12 CFR 5.34(e).

We invite comment on whether and how we could improve the current rule to further reduce application burden for community banks seeking to engage in certain routine bank-permissible activities. Specifically:

(1) Should the OCC expand the list of activities eligible for after-the-fact notice or expedited filing to include more activities that do not present significant safety and soundness concerns?

(2) What types of activities should the OCC include in such an expanded list?

Banks that have experience with the OCC's applications process are also invited to make suggestions about how that process could be streamlined or improved for community banks. For example, could the OCC modify the process to reduce the need for, and therefore the costs of, community bank reliance on outside expertise to help them comply with filing requirements?

Branching is an area in which community banks are especially active. In 1998, national banks with assets of less than \$250 million filed approximately 358 branching applications. National banks with assets of between \$250 million and \$1 billion filed 213 branching applications. OCC intrastate branch application procedures generally require a 30-day public comment period and a decision no later than 15 days after the close of the public comment period or 45 days after the filing, whichever is later, for applications qualifying for expedited processing, and no later than 30 days after the close of the comment period for applications subject to standard processing. (The comment period for applications to engage in a short-distance branch relocation is 15 days.) OCC rules also require an applicant to publish notice of its filing in a newspaper of general circulation in the community in which the applicant proposes to engage in business.

We are requesting comment on whether there are alternative time frames or methods of providing public notice that would reduce burden for community banks while preserving the ability of the public to provide meaningful comment pursuant to the CRA or otherwise. For example:

(1) Would posting a conspicuous notice at the main office and all existing branches of the bank in lieu of newspaper publication reduce unnecessary burden but still provide adequately for public participation?

(2) Are there other reasonable regulatory alternatives that would be less burdensome for community banks but that are consistent with statutory requirements and the OCC's supervisory goals?

Part 32—Lending limits

Federal law (12 U.S.C. 84) limits the amount of loans and extensions of credit a national bank can make to any one borrower to 15 percent of a national bank's unimpaired capital and surplus. A bank may lend an additional 10 percent if the credit is secured by readily marketable collateral. Section 84 also provides exceptions to these limits for various types of loans or extensions of credit, such as loans secured by certain obligations of the United States or fully guaranteed by the United States, loans secured by a segregated deposit account, and loans arising from the discount of certain types of commercial paper. The OCC is authorized to issue rules to carry out the purposes of Section 84 and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit. The OCC's rule implementing section 84 is set forth at 12 CFR part 32.

Community banks in a number of states have represented to the OCC that disparities in the lending limits applicable to national banks impair their ability to provide effective and competitively priced services in many cases. We are interested in obtaining further information about the extent to which these limits may constrain community banks from prudently extending credit, especially as compared with other financial services providers in the markets in which they compete. Commenters are invited to provide specific information about such disparities in particular states, and to address the following questions:

(1) Does the national bank lending limit create competitive disadvantages for community banks?

(2) Are community banks operating under national charters losing significant business to competitors, as a result of the constraints imposed by the national bank lending limits? If so, which types of lending are most heavily affected?

(3) Are there factors in addition to the lending limits that could be contributing to this business loss?

Because the lending limit promotes diversification of credit risk, which is fundamental to the safe and sound operation of banks, the OCC must undertake any revisions to the national bank lending limit rules with great care. Commenters who recommend changes

to the OCC's lending limit rule therefore are asked to:

(1) Identify specific categories of loans or borrowers that might be addressed;

(2) Identify prudential conditions that the OCC might impose, to ensure that any change is implemented consistent with safety and soundness; and

(3) Discuss whether any changes to the lending limits should include safeguards, such as collateralization or margin requirements, similar to those imposed by some states with lending limits that exceed those in 12 CFR part 32.

Commenters are also invited to evaluate the effect of the lending limit rules on structures, such as loan participations, that are commonly used to diversify credit risk and to recommend any changes to these provisions that would facilitate community banks' use of these structures, consistent with safety and soundness.

Part 7—Corporate Governance

The OCC recently revised some of its rules to enhance a national bank's flexibility to use the corporate governance procedures that are best suited to a particular bank's operations. For example, part 7 of our regulations now permits national banks to adopt the corporate governance provisions in the law of the state where the main office of the bank is located, the state where the holding company of the bank is incorporated, the Delaware General Corporation Law, or the Model Business Corporation Act, to the extent that these standards are not inconsistent with applicable federal banking statutes or regulations, or bank safety and soundness.

Community bank operations and management may present unique concerns from a corporate governance perspective, and we invite comment on whether there are additional ways to enhance the flexibility of existing procedures. For example, are there specific state law provisions that we should consider including in the regulation as appropriate for adoption by community banks?

Part 3—Capital Adequacy

The OCC, and the other federal banking agencies,² measure banks' capital adequacy according to a detailed set of uniform standards based on an international agreement, commonly

²The OCC's capital adequacy standards appear at 12 CFR part 3. The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) each have regulations containing similar standards.

referred to as the Basle Accord, which was concluded in 1988 by the Basle Committee on Banking Regulations and Supervisory Practices (the Basle Committee).³ The 1988 Accord applies to internationally active banks.⁴ The OCC's capital adequacy standards, however, apply to all national banks, and the other agencies' standards similarly apply to all of the institutions they supervise.

The OCC is interested in learning commenters' views about whether the differences in activities and levels and types of risks between large and community banks warrant a differential approach to supervising capital adequacy. Commenters addressing this issue are invited to:

(1) Suggest a different, simpler overall approach to measuring capital adequacy for community banks; and

(2) Identify specific aspects of the OCC's part 3 standards that could be revised or applied differently to community banks.

The part 3 capital adequacy standards are linked directly to the prompt corrective action (PCA) provisions in 12 CFR part 6 of the OCC's rules. The capital categories used for PCA purposes (e.g., well capitalized, adequately capitalized, etc.) are defined by reference to the standards and definitions in part 3. The PCA framework, which derives from statute,⁵ is a crucial component of safety and soundness supervision. Like the capital adequacy standards, it has been implemented jointly by the OCC and the other federal banking agencies. Accordingly, commenters favoring a differential approach to capital adequacy supervision for community banks are encouraged to address how such an approach could be implemented consistent with the PCA requirements.

We expect to use the information that commenters provide on this issue to inform our discussions with the other agencies about alternative approaches to

³This Committee is now known as the Basle Committee on Banking Supervision. The Basle Committee was established in 1975 by the central bank Governors of the Group of Ten Countries. It consists of senior representatives of bank supervisory authorities and central banks from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. It usually meets at the Bank for International Settlements in Basle, where its permanent Secretariat is located.

⁴The Basle Committee is currently considering revisions to the 1988 Accord. Any changes would be subject to a consultative process and are expected also to apply to internationally active banks.

⁵See 12 U.S.C. 1831o (PCA statute); 12 CFR part 6 (OCC PCA regulation).

evaluating capital adequacy for small institutions. After receiving comments in response to this ANPR, the OCC will consult with the other agencies to determine if modifications to the capital regulations are appropriate.

Comment Solicitation

The OCC invites comment generally on each of the areas identified in this advance notice, as well as specifically on the questions asked in each area. For each of these areas, we are interested in:

- (1) Whether existing rules are requiring inefficient allocation of the bank's existing resources or imposing undue burdens on in-house staff.
- (2) What community bank lines of business or community bank operations are affected by the rule and what specific requirements require the bank to obtain expertise from outside sources?
- (3) Could we change or modify specific provisions to reduce burdens on community banks without compromising safety and soundness standards?
- (4) Are there reasonable regulatory alternatives that would be less burdensome for community banks?

In addition, commenters on this notice are invited to suggest other regulations that could be modified in ways helpful to community banks.

Dated: May 4, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99-12011 Filed 5-11-99; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 050399D]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on May 26 and 27, 1999, to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, May 26, 1999, at 9:30 a.m.

and on Thursday, May 27, 1999, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Plymouth Inn, 180 Water Street, Plymouth, MA 02360; telephone (508) 747-4900. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036; telephone: (781) 231-0422. Copies of framework adjustment documents may be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Wednesday, May 26, 1999

After introductions, the Executive Director of the South Atlantic Fishery Management Council will discuss the Atlantic Coastal Cooperative Statistics Program process from a Council perspective. During the Groundfish Committee Report which follows, the committee will make recommendations to the Council regarding approval of Framework Adjustment 31 (FWA 31) to the Northeast Multispecies Fishery Management Plan (FMP). Possible management measures on FWA 31 would require vessels in the multispecies fishery to remove four 30-day blocks out of their fishing time in the fishery to achieve the FMP objectives for Georges Bank cod and minimize impacts on other regulated species. Other possible measures in this framework include eliminating the Gulf of Maine cod trip limit program running clock, raising the cod minimum size to 21 inches (0.5 m), and reducing the number of hooks and gillnets fished by fixed gear vessels on Georges Bank. The Groundfish Committee also will provide the Council with an update on the development Amendment 13 to the FMP. The discussion of groundfish issues will continue throughout the rest of the afternoon.

Thursday, May 27, 1999

The meeting will commence with reports from the Council Chairman, Executive Director, Acting NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission. During the Scallop Committee Report, the Council will identify issues to be addressed by Amendment 10 to the Atlantic Sea Scallop FMP, including

rotational area management. Additionally, the Council will issue recommendations to the Acting Regional Administrator for specific research proposals utilizing the 1 percent scallop Total Allowable Catch set-aside from Closed Area II. During the Whiting Committee Report, the committee will recommend ways to modify the mesh size/possession limit enrollment program and expand the use of net strengtheners to the 2.5 inch (0.06 m) category in the whiting fishery. Any recommendations approved by the Council may be submitted to NMFS for its consideration as a public comment on Amendment 12 to the Northeast Multispecies Fishery Management Plan. The Council will discuss industry-based gear research and information collection opportunities during years 1 and 2 of plan implementation. During the afternoon session, the Interspecies Committee will report on and ask for approval of committee priorities, including vessel permit consistency and upgrading issues and recommendations for changing the start dates of the fishing years. The committee will report on their discussions about vessel capacity management. The Habitat, Enforcement, Dogfish, Herring, and Ad-hoc Vessel Buyback Committees will update the Council on their activities.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 6, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99-12031 Filed 5-11-99; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 64, No. 91

Wednesday, May 12, 1999

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

SUMMARY: An Environmental assessment on the Council's proposed regulatory revisions of its regulations implementing Section 106 of the National Historic Preservation Act was prepared in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the Advisory Council on Historic Preservation's NEPA regulations, 36 CFR Part 805. The environmental assessment made a preliminary determination that promulgation of the revised regulations would not have a significant impact on the quality of the human environment and that preparation of an environmental impact statement would not be necessary. Notice of the availability of the environmental assessment and preliminary determination of no significant impact, and of a 30-day public comment period was published in the **Federal Register** on August 12, 1997. The Council has considered the comments received and has found that the proposed action will have no significant impact on the human environment. Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: Javier Marqués, Assistant General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004. (202) 606-8503.

Authority: 42 U.S.C. 4321 *et seq.*; 36 CFR part 805.

Dated: May 6, 1999.

John M. Fowler,

Executive Director.

[FR Doc. 99-11906 Filed 5-11-99; 8:45 am]

BILLING CODE 4310-10-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Malaria Vaccine Development Program: Federal Advisory Committee; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the USAID Malaria Vaccine Development Program (MVDP) Federal Advisory Committee. The meeting will be held from 8:30 AM to 5:00 PM on June 10, 1999 and from 8:30 to noon on June 11, 1999 at the Conference Room of the Environmental Health Project located in Suite 300, 1611 North Kent Street in Arlington, VA 22209-2111.

The agenda will concentrate on the activities of the MVDP over the past six months and plans for the next year. The meeting will be open to the public unless it is necessary to discuss procurement sensitive information; should this be the case, it will be announced and the meeting closed at the appropriate time. Any interested person may attend the meeting, may file written statements with the committee before or after the meeting, or present any oral statements in accordance with procedures established by the committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting or to obtain additional information about the USAID MVDP should contact Carter Diggs, the designated Federal Officer for the USAID MVDP Federal Advisory Committee at the Office of Health and Nutrition, USAID/G/PHN/HN/EH/, Room 3.07-013, 3rd floor, RRB, Washington, DC 20523-3700, telephone (202) 712-5728, Fax (202) 216-3702, cdiggs@usaid.gov.

Carter Diggs,

USAID Designated Federal Officer (Technical Advisor, Malaria Vaccine Development Program).

[FR Doc. 99-12027 Filed 5-11-99; 8:45 am]

BILLING CODE 6116-01-M

COMMODITY CREDIT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., May 17, 1999.

PLACE: Room 104-A, Jamie Whitten Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the Open Meeting of May 11, 1998.
 2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
 3. Memorandum re: Commodity Credit Corporation's (CCC's) Financial Condition Report.
 4. Memorandum re: Settlement Actions Report.
 5. Resolution re: Revisions of Bylaws of Commodity Credit Corporation.
 6. Resolution re: Termination of Obsolete Commodity Credit Corporation Board Dockets.
 7. Docket P-CON-99-008, re: Delegation of Authority for Commodity Credit Corporation Agreements with Federal Agencies, State and Local Governments, and Other Entities for Hazardous Waste Management.
- CONTACT PERSON FOR MORE INFORMATION:** Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, Stop 0571, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, D.C. 20250-0571.

Dated: May 7, 1999.

Juanita B. Daniels,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 99-12146 Filed 5-10-99; 2:54 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Uniform Grain and Rice Storage Agreement Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of fees.

SUMMARY: The purpose of this notice is to publish a schedule of fees to be paid to Commodity Credit Corporation (CCC) by grain and rice warehouse operators requesting to enter into a storage agreement to store CCC commodities or commodities pledged as collateral for

CCC loans; increase the amount of storage covered by an existing storage agreement for storage of such commodities; or renew an existing agreement for the storage of such commodities.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Howard Froehlich, Chief, Storage Contract Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW STOP 0553, Washington, DC 20250-0553, telephone (202) 720-7398, FAX (202) 690-3123.

Determination: In accordance with the provisions of the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), CCC enters into storage agreements with grain and rice warehouse operators to provide for the storage of commodities owned by CCC or pledged as security to CCC for marketing assistance loans.

Specifically, 7 CFR part 1421.5558 provides that all grain and rice warehouse operators who do not have an existing agreement with CCC for storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and examination fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination.

A review of the revenue collected for application and examination fees indicates that the fees collected are insufficient to meet costs incurred by CCC for warehouse examinations and contract origination administrative functions. Accordingly, beginning April 1 with the start of the 1999-2000 contract year, the fees are changed by increasing by 7.5 percent those fees applicable to the 1998-99 contract year.

The fee will be computed at the rate of \$16 for each 10,000 bushels of storage capacity or fraction thereof, but the fee will be not less than \$160 nor more than \$1,600.

Further each warehouse operator who has a non-federally licensed grain or rice warehouse in States that do not have a cooperative agreement with CCC for warehouse examinations must additionally pay an annual fee to CCC for each such warehouse which is approved by CCC or for which CCC approval is sought. The collection of the additional fee by CCC is currently suspended. CCC continues to suspend collection of the annual fee, but CCC may reinstate the annual fee by future notice to the industry.

Signed at Washington, DC, on May 5, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99-11993 Filed 5-11-99; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Approval of New Information With Use of a Survey

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service (RBS) has received approval for a new information collection in order to render service to associations of producers of agricultural, forestry, and fisheries products and federations and subsidiaries thereof as authorized in the Cooperative Marketing Act of 1926.

DATES: Comments on this notice must be received by July 12, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Julie A. Hogeland, Agricultural Economist, RBS, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 3253, Washington, DC. 20250-3253, Telephone (202) 690-0409.

SUPPLEMENTARY INFORMATION:

Title: Local Cooperatives' Role in the Emerging Grain and Feed Industry.

OMB Control Number: 0570-0032.

Expiration Date of Approval: September 30, 1999.

Type of Request: New Information Collection.

Abstract: The mission of the Rural Business-Cooperative Service (RBS), formerly Agricultural Cooperative Service (ACS), is to assist farmer-owned cooperatives in improving the economic well-being of their farmer-members. This is accomplished through a comprehensive program of research on structural, operational, and policy issues affecting cooperatives; technical advisory assistance to individual cooperatives and to groups of producers who wish to organize cooperatives; and development of educational and informational material. The authority to carry out RBS's mission is defined in the Cooperative Marketing Act of 1926 (44 Stat. 802-1926).

Authority and Duties of Division (7 U.S.C. 453)

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries thereof, engaged in the cooperative marketing of agricultural products including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized to:

(1) Acquire, analyze and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) Conduct studies of the economic, legal, financial, social and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial and merchandising problems of cooperative organizations.

(3) Make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; to report to the association surveyed the results thereof; and, with the consent of the association surveyed, to publish summaries of the results of such surveys, together with similar facts, for the guidance of cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) Acquire from all available sources, information concerning crop prospects, supply, demand, current receipts, exports, imports, and prices of agricultural products handled or marketed by cooperative associations, and to employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations and others.

RBS also has a stated objective to monitor the structure, conduct, and performance of the grains and oilseeds marketing systems and the role and effectiveness of cooperatives within that system; analyze the impact of government programs and policies that affect grains and oilseeds cooperatives; and provide leadership and guidance to grain and oilseed cooperatives based on the results of research and technical assistance studies and on program experience.

The elimination of government storage programs during the mid-1990s removed what, for many years, was the financial backbone of most cooperative

grain elevators. At the same time, the market began a crucial transformation to more fully account for differences in the value of grain in its end use.

Export markets, the genesis of this transformation, typically blend grain lots to achieve a minimum average No. 2 quality. They usually do not pay premiums for No. 1 grain, and they discount from the No. 2 standard. The industry argues that economic gains from blending allow it to operate on a narrower per bushel price margin. This emphasis on price downplays the functional attributes that affect nutrient content or processing characteristics. Moreover, kernel characteristics which increase the harvestability and storability of grain are the opposite of those that improve the efficiency of processing operations. Although processors want softer-textured, thin pericarp kernels, plant breeders have generally focused on harder-textured products.

Consequently, softer grains must be produced on a systematic and contractual basis since such varieties deteriorate when passing through the traditional commodity distribution system. These newer, often genetically-engineered grains are typically produced and marketed outside today's commodity system and purchased as "manufactured" or identity-preserved products.

Cooperatives' infrastructure—farmer linkages, elevators, distribution channels, and grain processing activities—gives them an unparalleled opportunity to position themselves within the emerging identity-preserved grain sector before alternative systems have emerged. Yet, it is not clear to what degree cooperatives are cognizant of or prepared for these opportunities. The survey will reveal a baseline of cooperative resources and preferences that, at a minimum, could raise cooperative awareness of industry opportunities, and, ultimately, contribute to the standardized production and marketing grain sector desired by processors.

Because identity-preserved grains represent a new industry, data on production intentions, marketing, infrastructure requirements, and other facets of industry structure and performance are not available from alternative sources.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Local cooperatives involved in grain or feed marketing or handling.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 175 hours.

Copies of this information collection can be obtained from Jean Mosley, Support Services Division, Regulation and Paperwork Management Branch, at (202) 690-0041.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Support Services Division, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW, Stop 0742, Washington, D.C. 20250. All comments to this notice will be summarized. All comments will also become a matter of a public record.

Dated: April 28, 1999.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 99-11979 Filed 5-11-99; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Application filing deadline.

SUMMARY: The Rural Utilities Service (RUS) announces its Distance Learning and Telemedicine Program application window for funding during fiscal year (FY) 1999. For FY 1999, \$12.5 million in grants and \$150 million in loans will be made available for distance learning and telemedicine projects serving rural America. The funding will be provided in three categories: (1) \$7.5 million will be available for grants; (2) \$100 million will be available for loans; and (3) \$55

million will be available for combination grants and loans (\$5 million in grants paired with \$50 million in loans).

DATES: Applications for grants must be postmarked by RUS no later than Friday, July 9, 1999. Applications for FY 1999 loans or combination loans and grants may be submitted at anytime up to September 30, 1999, and will be processed on a first-come, first-serve basis.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1550, Washington, DC 20250-1550. Applications should be marked "Attention: Director, Advanced Services Division, Telecommunications Program".

FOR FURTHER INFORMATION CONTACT:

Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250-1590, Telephone (202) 720-9554, Facsimile (202) 720-0810.

SUPPLEMENTARY INFORMATION: For FY 1999, \$7.5 million in grants, a combination of \$5 million in grants paired with \$50 million in loans, and \$100 million in loans will be made available for distance learning and telemedicine projects. On May 10, 1999, regulations published in the **Federal Register**, March 25, 1999, at 64 FR 14401, governing this program became final. These new regulations clarify the requirements for the different types of financial assistance offered; streamline policies and procedures for obtaining loans and expand the purposes for which loan funds can be used; and award grants on a competitive basis.

Notice is hereby given that under §§ 1703.124, 1703.133, and 1703.143, RUS has determined the maximum amount of an application for a grant that will be considered for funding in FY 1999 as \$350,000. The maximum amount for a loan, generally, that will be considered for funding in FY 1999 is \$10,000,000. However, RUS may fund a project greater than \$10,000,000 subject to the project's feasibility and the availability of loan funds.

Applications for financial assistance must be submitted in accordance with 7 CFR part 1703, which establishes the policies and procedures for submitting an application for financial assistance. This document and an application guide to assist in the preparation of applications are available on the

Internet at the following address: "http://www.usda.gov/rus/dlt/dlml.htm".

Applications guides may also be requested from RUS by contacting one of the following Area Offices:

Eastern Area, USDA-RUS, Phone: (202) 690-4673

Northwest Area, USDA-RUS, Phone: (202) 720-1025

Southwest Area, USDA "RUS, Phone: (202) 720-0800

Each application will be reviewed for completeness in accordance with 7 CFR part 1703. The applicant will be notified within 15 working days of receipt of the results of this review, citing any information needed to complete the application. It is suggested that grant applications be submitted prior to the deadline to ensure they can be reviewed and considered complete by the deadline.

Dated: May 6, 1999.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 99-11856 Filed 5-11-99; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 17-99]

Foreign-Trade Zone 124—LaPlace, LA, Foreign-Trade Subzone 124H—Bollinger Shipyards Lockport, LLC; Application for Expansion (Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting authority to expand Subzone 124H, at the Bollinger Shipyards Lockport, LLC (Bollinger) shipbuilding facility located in Lockport, Louisiana, to include four new sites in Lafourche and St. Mary Parishes. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 29, 1999.

Subzone 124H was approved on July 10, 1998 (Board Order 993, 63 FR 39069, 7-21-98). The subzone currently consists of one site (250 acres) is located at 8365 Louisiana Highway 308, about 4 miles south of Lockport (Lafourche Parish), Louisiana. The applicant is now requesting authority to expand the subzone to include four additional sites: proposed Site 2 (168 acres)—Bollinger Larose, LLC, 1515 Highway 24, Larose (Lafourche Parish); proposed Site 3 (67

acres)—Bollinger Marine Fabricators, LLC, 816 Bollinger Lane, Amelia (St. Mary's Parish); proposed Site 4 (101 acres)—Bollinger Morgan City, LLC, 806 Bollinger Lane, Amelia; and, proposed Site 5 (50 acres)—Bollinger Amelia Repair, LLC, 606 Ford Industrial Road, Amelia. The Bollinger Lockport facility is used for the construction and repair of commercial and government vessels under FTZ procedures for domestic and international customers.

This proposal does not request any new authority under FTZ procedures in terms of products or components, but it does involve a potential increase in the facility's level of production under FTZ procedures. Bollinger will operate the proposed sites as an integral part of Subzone 124H.

The proposed expanded manufacturing activity conducted under FTZ procedures would be subject to the "standard shipyard restriction" applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that Customs duties be paid on such items.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 1999).

A copy of the application will be available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 110 North Airline Avenue, Gramercy, LA 70052

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: April 30, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-12016 Filed 5-11-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 16-99]

Foreign-Trade Subzone 59A—Lincoln, NE; Request for Removal of Board Order Condition; Kawasaki Motors Manufacturing Corp., U.S.A. (Utility Work Trucks)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), operator of FTZ 59A, requesting removal of the time limit in Board Order 744 (60 FR 30518, 6-9-95), which authorized the manufacture of utility work trucks (Mules™) under FTZ procedures for an initial period ending July 1, 1999, subject to extension. The application was formally filed on April 29, 1999.

Subzone 59A was approved by the Board in 1980 with authority granted for the manufacture of motorcycles, jet skis, and four wheel all-terrain vehicles (Board Order 163, 45 FR 58637, 9-4-80). The subzone was subsequently expanded in 1994 (Board Order 712, 59 FR 66891, 12-28-94). The Board later approved the manufacture of off-road, utility work trucks and industrial robots with 6 or more axes of motion under FTZ procedures for the U.S. market and export (Board Orders 744 and 745, 60 FR 30517, 6-9-95).

KMM is now requesting that the FTZ manufacturing authority for utility work trucks be extended on a permanent basis. Foreign-sourced components for the work trucks comprise approximately 53 percent of the value of finished vehicles' materials and include: engines, transmissions, calipers/brake parts, and tires (duty rate range: free-9.0%).

FTZ procedures exempt KMM from Customs duty payments on the foreign components used in export production. On its domestic sales, the company is able to choose the duty rate that applies to finished work trucks (HTSUS 8709.19.0030, duty free) for the foreign components noted above. The request indicates that the savings from FTZ procedures will continue to help improve the facility's international competitiveness. In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their

receipt is July 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230-0002.

Dated: April 29, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-12015 Filed 5-11-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18-99]

Foreign-Trade Subzone 59A—Lincoln, NE, Request for Removal of Board Order Condition; Kawasaki Motors Manufacturing Corp., U.S.A. (Industrial Robots)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), operator of FTZ 59A, requesting removal of the time restriction on manufacturing authority for industrial robots pursuant to Board Order 745 (60 FR 30517, 6-9-95), which authorized the manufacture of industrial robots under FTZ procedures for an initial period ending July 1, 1999, subject to extension. It was formally filed on May 3, 1999.

Subzone 59A was approved by the Board in 1980 with authority granted for the manufacture of motorcycles, jet skis, and four wheel all-terrain vehicles (Board Order 163, 45 FR 58637, 9-4-80). The subzone was subsequently expanded in 1994 (Board Order 712, 59 FR 66891, 12-28-94). The Board later approved the manufacture of off-road, utility work trucks and industrial robots with 6 or more axes of motion under FTZ procedures for the U.S. market and export (Board Orders 744 and 745, 60 FR 30517, 6-9-95). KMM is now requesting that the manufacturing authority for industrial robots be extended on a permanent basis. Foreign-sourced components comprise approximately 60 percent of the finished robots' FOB value and include: plastic parts, rubber belts, fasteners, metal fittings, air pumps/compressors,

data processing equipment (controllers), optical readers, valves and switches, electric motors and transformers, transmissions/gear boxes, diodes, transistors, semiconductors, liquid crystal devices, and measuring instruments (duty rate range: free-9.0%).

FTZ procedures exempt KMM from Customs duty payments on the foreign components used in export production. On its domestic sales, the company can choose the duty rate that applies to finished industrial robots (HTSUS 8479.50.0000, 2.5%) for the foreign components noted above. The request indicates that the savings from FTZ procedures will continue to help improve the facility's international competitiveness. In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230-0002.

Dated: May 3, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-12017 Filed 5-11-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 15-99]

Foreign-Trade Zone 122—Corpus Christi, TX; Application for Subzone Equistar Chemicals LP (Oil Refinery); Nueces County, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special-purpose subzone status for the petrochemical complex of Equistar Chemicals LP, located in

Nueces County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 27, 1999.

The petrochemical complex and connecting pipelines (1,700 acres) are located at four sites in Nueces County, Texas (Corpus Christi area): *Site 1* (1,600 acres)—main petrochemical complex, located at 1501 McKinzie Road; *Site 2* (3 leased tanks on 51.26 acres, 141,600 barrel capacity)—dock facility located adjacent to the Corpus Christi inner harbor; *Site 3* (10 leased tanks, 1.4 million barrel capacity) at the Hess storage facility and, and *Site 4* (2 leased tanks, 166,000 barrel capacity) located at the CITGO Corpus Christi refinery located at 1802 Nueces Bay Blvd. The complex (253 employees) produces a variety of petrochemical feedstocks and fuel products, including ethylene (1.7 billion lb. capacity), propylene (800 million lb. capacity), benzene (600 million lb. capacity), butadiene (200 million lb. capacity), propane, toluene, butylenes, piperylenes, resin oils, dicyclopentadiene, isoprene, methanol, and fuel oils. The complex also produces MTBE, biphenyl, hydrogen, and certain gasoline blendstocks, which will not be produced under zone procedures. Some 54 percent of the inputs, including gas oil, naphtha, condensate, and natural gasoline, are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks by admitting incoming foreign inputs in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. Under the FTZ Act, certain merchandise in FTZ status is exempt from ad valorem inventory-type taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 1999. Rebuttal comments in response to material

submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S.,
Customs Service, 400 Mann St.,
Corpus Christi, Texas 78401
Office of the Executive Secretary,
Foreign-Trade Zones Board, Room
3716, U.S. Department of Commerce,
14th & Pennsylvania Avenue, NW.,
Washington, DC 20230

Dated: May 3, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-12014 Filed 5-11-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Tuesday, June 1, 1999. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the 1999 Baldrige Award cycle, final judging interaction, survey of applicants and judging process improvement discussions. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 1, 1999, at 11:00 a.m. and adjourn at 4:30 p.m. on June 1, 1999. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 26, 1999, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99-11893 Filed 5-11-99; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Wednesday, June 2, 1999. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include reviewing roles and responsibilities of Judges and Overseers; information transfer through QE XI, regional conferences, state, local and international networks; discussion of proposed program changes including three award/category cap; health care and education efforts including first year progress, fund-raising, and 2000

criteria; and 1999 Award criteria changes and future criteria evolution.

DATES: The meeting will convene June 2, 1999, at 8:30 a.m. and adjourn at 4:00 p.m. on June 2, 1999.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2361.

Dated: May 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99-11894 Filed 5-11-99; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031899A]

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; IFQ Halibut Fisheries Off Alaska; Experimental Fishing Permit

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

ACTION: Issuance of an experimental fishing permit.

SUMMARY: NMFS announces the issuance of experimental fishing permit 99-01 (EFP) to the Washington Sea Grant Program (WSGP). The EFP authorizes the WSGP to conduct an experiment in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Area (BSAI) that would test the effectiveness of seabird avoidance measures. NMFS could use results from the EFP to establish more effective regulatory measures to reduce incidental take of seabirds in these fisheries. This EFP is necessary to provide information not otherwise available through research or commercial fishing operations. The intended effect of this action is to promote the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act.

ADDRESSES: Copies of the EFP are available from Lori Gravel, Sustainable Fisheries Division, Alaska Region,

NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907-586-7424.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area authorize the issuance of EFPs for fishing for groundfish in a manner that would otherwise be prohibited under existing regulations. The procedures for issuing EFPs are set out at 50 CFR 679.6 and 600.745(b).

On March 29, 1999, NMFS announced in the **Federal Register** the receipt of an application for an EFP from the WSGP (64 FR 14885). The application requested authorization for WSGP to test the effectiveness of seabird avoidance measures in two fisheries, (1) the Individual Fishing Quota (IFQ) sablefish and Pacific halibut fisheries in the GOA and the BSAI and (2) the Pacific cod and Greenland turbot hook-and-line fisheries in the BSAI. WSGP will conduct the experiment as a part of its research project funded under the NMFS Saltonstall-Kennedy program (SK Project). WSGP will compare two seabird avoidance measures to a control (no measures) in each fishery. An EFP is necessary because the SK Project's experimental procedure calls for testing seabird avoidance measures relative to a control of no seabird avoidance measure, and possibly, the testing of new seabird bycatch avoidance technologies that are not included in the current NMFS regulations. The purpose of this research is to assess the effectiveness of alternative seabird avoidance measures for hook-and-line fisheries off Alaska. The objectives of the SK Project are to: (1) Work cooperatively with the fishing industry, NMFS, and the U.S. Fish and Wildlife Service (USFWS) to select and then test the effectiveness of seabird avoidance measures in hook-and-line fisheries off Alaska; (2) characterize the species-specific behavioral interactions of seabirds with hook-and-line gear on active fishing vessels, with and without seabird avoidance measures; (3) work cooperatively with the fishing industry, NMFS, and the USFWS to develop recommendations for revisions to existing seabird avoidance regulations and performance standards based on the results of this research; and (4) recommend future research, and research protocols. Issuance of this EFP will provide information not otherwise available through research or commercial fishing operations.

WSGP designed and NMFS reviewed the experimental protocol for testing on smaller-sized vessels [less than 124 ft (37.8 meters) length overall (LOA)]. The protocol will require a minimum of 640,000 to 1 million deployed hooks and 150 observer days over 2 years to address adequately the efficacy of seabird avoidance measures relative to a control of no measure. To achieve this sample size objective, three vessels per year in the IFQ and groundfish fisheries will be required, with seabird observer coverage for a total of 45 days per year (approximately three trips), assuming a total hook retrieval observation rate of 40 percent. WSGP has estimated that for testing on larger-sized vessels [longer than 124 ft LOA (37.8 meters)] in the BSAI, a minimum of 3 million deployed hooks and 150 observer days over 2 years will be needed to adequately address the efficacy of seabird avoidance measures relative to a control of no measure. To achieve this sample size objective two vessels per year in the Pacific cod fishery will be required, with seabird observer coverage for a total of 40 days per year (approximately 2 trips), assuming a total hook retrieval observation rate of 40 percent. The experiment is scheduled to take place in the GOA and BSAI for approximately 45 to 60 days during May 1999 through July 1999, and for approximately 45 to 60 days during April 2000 through July 2000, and in the BSAI for approximately 40 to 50 days during July 1999 through October 1999, and for approximately 40 to 50 days during July 2000 through October 2000. The effective period for the EFP may be revised for other months in 1999 and 2000, pending agreement between the permit holder and the Administrator, Alaska Region, NMFS (Regional Administrator).

WSGP established an industry advisory committee in consultation with NMFS and the USFWS. This committee will select the participating vessels and the seabird avoidance measures to be tested. The EFP authorizes three vessels per year in the GOA and BSAI groundfish fisheries and/or the Pacific halibut fishery, and two vessels per year in the BSAI groundfish fishery. The performance of seabird avoidance gear will be tested against a standard control gear. The control gear will be identical hook and-line gear, although configured without the seabird avoidance gear. Fishing with experimental and control gear will be conducted with procedures and sites similar to those used during the commercial fishery for sablefish and halibut in the GOA and for groundfish (Pacific cod and Greenland turbot) in the BSAI.

The Regional Administrator approved the EFP application and has issued EFP 99-01 to the WSGP. The EFP authorizes WSGP to conduct experimental operations without the use of otherwise required seabird avoidance measures during the course of the experiment during designated periods of 1999 and 2000. No additional harvest amounts of target or incidental catch are authorized.

Failure of the permit holder to comply with the terms and conditions of the EFP may be grounds for revocation, suspension, or modification of the EFP under 15 CFR part 904 with respect to any or all persons and vessels conducting activities under the EFP. Failure to comply with applicable laws also may result in sanctions imposed under those laws.

Classification

The Regional Administrator determined that fishing activities conducted under this action would not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on the groundfish or IFQ fisheries. The USFWS has issued a section 10 permit to WSGP under the Endangered Species Act. Such a permit authorizes the incidental take of a short-tailed albatross in the unlikely event that one were taken during the course of the experiment.

This notice is exempt from review under E.O. 12866 and the Regulatory Flexibility Act (RFA) because prior notice and opportunity for public comment are not required for this notice. The analytical requirements of the RFA are inapplicable.

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

Dated: May 6, 1999.

Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 99-12030 Filed 5-11-99; 8:45 am]
BILLING CODE 3510-22-F

COMMISSION OF FINE ARTS

Notice of Meeting

The Meeting of the Commission of the Fine Arts is scheduled for 20 May 1999 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C., 20001. Items of discussion will include designs for projects affecting the appearance of Washington, D.C., including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral

statements should be addresses to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202-504-2220. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., 3 May 1999.

Charles H. Atherton,
Secretary.

[FR Doc. 99-11909 Filed 5-11-99; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Pre-Candidate Procedures; USMA Forms 375, 723, 450, 21-12, 21-27, 381; OMB Number 0702-0060.

Type of Request: Reinstatement.

Number of Respondents: 65,100.

Responses Per Respondent: 1.

Annual Responses: 65,100.

Average Burden Per Response: 8 minutes.

Annual Burden Hours: 8,258.

Needs and Uses: Student information is obtained through the use of business reply cards on posters and in publications, permitting potential candidates to request information on the U.S. Military Academy. This initial student information received is retained in a file until an additional response is received by potential candidates. The purpose of this activity is to obtain a group of applicants who eventually may be evaluated for admission to West Point.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: May 6, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99-11901 Filed 5-11-99; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on June 1, 1999, June 8, 1999, June 15, 1999, June 22, 1999 and June 29, 1999 at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Pub. L. 92-463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301-4000.

May 6, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer Department of Defense.

[FR Doc. 99-11902 Filed 5-11-99; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Intent to Prepare an Environmental Impact Statement for a Deep Draft Power Intensive (DDPI) Ship Berthing, Logistics, and Maintenance Pier at Naval Station, San Diego, California

AGENCY: Department of Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the effects of constructing and operating a Deep Draft Power Intensive (DDPI) ship berthing, logistics and maintenance pier at Naval Station (NAVSTA), San Diego, California.

The proposed action is to demolish two existing piers, Piers 10 and 11, at Naval Station San Diego and construct and operate a replacement berthing, logistics and maintenance pier for DDPI ships. To accommodate the DDPI ships, construction would include dredging to 37 feet below Mean Lower Low Water (MLLW) and removal of approximately 536,000 cubic yards of sediment (of which approximately 268,000 cubic yards is believed to be unsuitable for ocean disposal). The replacement pier would be approximately 120 feet wide and 1500 feet long with power intensive utilities (4000 amps or more). This pier would be similar to Pier 13, an existing pier constructed at Naval Station San Diego in 1989 to support DDPI ships.

The purpose of the proposed action is to provide for berthing, logistics, maintenance, and utility requirements of DDPI ships moored at the San Diego Naval Complex. The need for the proposed action is to address the current shortfall in pier infrastructure/capacity for DDPI ships in the San Diego Naval Complex. The range of alternatives to be considered include:

(1) The proposed action, demolition of Piers 10 and 11 at Naval Station San Diego and construction of a new DDPI pier with associated dredging; (2) demolition of Piers 11 and 12 at Naval Station San Diego and construction of a new DDPI pier with associated dredging; (3) demolition of Pier 14 at Naval Station San Diego and construction of a new DDPI pier with associated dredging; and, (4) construction of a new pier or utilization of other available piers with associated

dredging within the San Diego Naval Complex. The EIS will also consider the No-Action Alternative: no demolition, replacement or new pier construction to accommodate the DDPI ships.

The EIS will evaluate the environmental effects associated with each of the alternatives. Various options for dredged sediment disposal will also be evaluated. Issues to be addressed in the EIS include, but are not limited to: water resources; biological resources; topography/geology; air quality; health and safety; land use; noise; transportation (vessel and ground); aesthetics; cultural resources; utilities; socioeconomics; and environmental justice. Impacts analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts. No decision to implement any of the alternatives will be made until the NEPA process is complete.

A public scoping meeting to receive oral and written comments from the public will be held on June 9, 1999 at the Holiday Inn, Terrace Ballroom, 700 National City Boulevard (at 8th Street), National City. The meeting will begin at 7 p.m. A Spanish-language interpreter will be available at the meeting.

A brief presentation describing the proposed action, alternatives and the NEPA process will precede the request for public comments. It is important that federal, state, and local agencies, as well as interested organizations and individuals, take this opportunity to identify environmental concerns they feel should be addressed during preparation of the EIS. Agencies and the public are invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, comments should clearly describe specific issues or topics that the commentator believes the EIS should address.

ADDRESSES: Questions regarding the scoping process AND written comments may be sent to South Bay Area Focus Team, 2585 Callagan Highway, Bldg. 99, Naval Station, San Diego, San Diego, CA 92136-5198, postmarked no later than June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick McCay (Code 5SPR.PM), South Bay Area Focus Team, 2585 Callagan Highway, Bldg. 99, Naval Station, San Diego, San Diego, CA 92136-5198; telephone (619) 556-8706; fax (619)

556-8296; e-mail mccaypj@efdswn.navafac.navy.mil

Sandra K. Melancon,
Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Liaison Officer.

[FR Doc. 99-12020 Filed 5-11-99; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of Open Teleconference Meeting Supplemental.

On April 21, 1999, the Department of Energy published a notice of open meeting announcing a meeting of the Secretary of Energy Advisory Board 64 FR 19522. In that notice, the teleconference meeting was scheduled for May 12, 1999. Today's notice is announcing that the teleconference meeting will take place on May 19, 1999, from 1:45 p.m. to 3:00 p.m.

Issued in Washington, D.C. on May 7, 1999.

Rachel M. Samuel,
Deputy Advisory Committee Management Officer.

[FR Doc. 99-11990 Filed 5-11-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Task Force on Fusion Energy
DATES AND TIMES: Wednesday, May 26, 1999, 8:30 AM—5:00 PM and Thursday, May 27, 1999, 8:30 AM—1:00 PM.

ADDRESSES: Lawrence Livermore National Laboratory (LLNL), Conference Room A, Building 123, 7000 East Avenue, Livermore, California 94551-0808. Note: Public attendees are requested to contact Ms. Sherry Graham (LLNL) in advance of the meeting to facilitate their access to the meeting site. Ms. Graham may be reached at (925) 422-4958 or via e-mail at graham16@LLNL.gov.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB-1), U.S.

Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-1709 or (202) 586-6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on Fusion Energy is to review the Department of Energy's plans for research and development of four fusion related technologies—pulsed-power, lasers, ion drivers, and magnetic fusion—and to provide advice to the Secretary of Energy Advisory Board on how to structure the Department's fusion energy programs, both inertial and magnetic. The review is to focus on the scientific quality of the programs, the goals and objectives of the programs, and the energy potential of each technology. The findings and recommendation of the Task Force on Fusion Energy are to comment on the goals and objectives of the Department's fusion energy related programs, provide a critique of the current development strategies, suggest changes in the overall fusion energy roadmap, and recommended funding levels.

Tentative Agenda

Wednesday, May 26, 1999

- 8:30–8:45 AM—Opening Remarks, Introductions & Objectives—Dr. Richard Meserve, Task Force Chairman
- 8:45–9:45 AM—Briefing & Discussion: Laser Fusion Concepts and Development Strategy
- 9:45–10:15 AM—Briefing & Discussion: Average-Power Krypton-Fluoride Lasers
- 10:15–10:45 AM—Briefing & Discussion: Average-Power Diode-Pumped Solid State Lasers
- 10:45–11:00 AM—Break
- 11:00–11:30 AM—Briefing & Discussion: Common Direct Drive Physics Issues
- 11:30–12:00 PM—Briefing & Discussion: Target Fabrication and Injection
- 12:00–1:30 PM—Lunch
- 1:30–2:00 PM—Briefing & Discussion: Direct Drive Ignition on NIF
- 2:00–2:45 PM—Briefing & Discussion: Non-Proliferation Considerations & International Collaboration
- 2:45–3:30 PM—Briefing & Discussion: Linkages to Other Fields of Scientific Research and Technology Spin-offs
- 3:30–3:45 PM—Break
- 3:45–4:30 PM—Briefing & Discussion: Participation of Colleges and Universities in Fusion Research
- 4:30–4:45 PM—Public Comment Period
- 4:45 PM—Adjourn

Thursday, May 27, 1999

- 8:30–8:35 AM—Opening Remarks & Objectives—Dr. Richard Meserve, Task Force Chairman
- 8:35–9:15 AM—Briefing & Discussion: Introduction to the Indirect Drive Approach to Inertial Fusion Energy—Strategy and Connection to the Defense Program's Inertial Confinement Fusion Program
- 9:15–10:00 AM—Briefing & Discussion: Heavy Ion Drivers
- 10:00–10:30 AM—Briefing & Discussion: Chambers
- 10:30–10:45 AM—Break
- 10:45–11:30 AM—Briefing & Discussion: Pulsed Power
- 11:30–12:00 PM—Briefing & Discussion: NIF and X-Ray Driven Ignition
- 12:00–12:30 PM—Briefing & Discussion: Inertial Fusion Energy Development Plan Strategy
- 12:30–12:45 PM—Public Comment Period
- 12:45 PM—Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Livermore, California, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB-1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Further information on the Task Force on Fusion Energy may be found at the Secretary of Energy Advisory Board's web site, located at <http://www.hr.doe.gov/seab>.

Issued at Washington, D.C., on May 7, 1999.

Rachel M. Samuel,
Deputy Advisory Committee Management Officer.

[FR Doc. 99-11991 Filed 5-11-99; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-2640-000]

Alliant Energy Corporate Services, Inc., Notice of Filing

May 6, 1999.

Take notice that on April 28, 1999, Alliant Energy Corporate Services, Inc., tendered for filing an executed Service Agreement for Short-Term Firm Point-to-Point transmission service, establishing British Columbia Power Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of April 8, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before May 18, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 99-11920 Filed 5-11-99; 8:45 am]
BILLING CODE 6117-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-298-000]

ANR Pipeline Company; Notice of Cashout Report

May 6, 1999.

Take notice that on April 30, 1999, ANR Pipeline Company (ANR) tendered for filing its annual system cashout report.

This filing represents ANR's annual report of the net revenues attributable to the operation of its cashout program, and covers the period January 1, 1998 to December 31, 1998. ANR has computed the cashout price surcharge of \$0.2485 per Dth pursuant to section 15.5(b) of the General Terms and Conditions of its tariff. However, ANR proposes not to implement the charge of \$0.2485, but rather seeks a waiver of its tariff in order to leave the lower existing charge of \$0.1211 per Dth in place.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11966 Filed 5-11-99; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP 99-301-000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Take notice that, on April 30, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff,

Second Revised Volume No. 1, the following tariff sheets to be effective June 1, 1999.

Eighth Revised Sheet No. 2
Fourth Revised Sheet No. 89
First Revised Sheet No. 118
Ninth Revised Sheet No. 120
Second Revised Sheet No. 161A
Third Revised Sheet No. 188
Fourth Revised Sheet No. 189
Third Revised Sheet No. 190

ANR states that the above-referenced tariff sheets are being filed in order to make changes to ANR's tariff to permit it the opportunity to charge Negotiated Rates as contemplated by the Federal Energy Regulatory Commission's Policy Statement on Alternative to Traditional Cost-of-SERVICE Rate Making for Natural Gas Pipelines, issued January 31, 1996 in Docket No. RM95-6-000.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11969 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-300-000]

Colorado Interstate Gas Company; Notice of Tariff Filing

May 6, 1999.

Take Notice that on April 30, 1999, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to

become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in the attached Appendix A to be effective June 1, 1999.

CIG states it is proposing to make certain minor changes to its tariff and certain administrative revisions and clarifications as follows:

- Update the system gap;
- Remove Order No. 636 transition and other outdated language;
- Correct, add and make clarifications to footnotes on the rate sheets;
- Update the Payment, Notices, Nominations and Points of Contact Sheets;
- Add language consistent with the Stipulation and Agreement in Docket No. RP96-190 that allows shippers requesting service under Rate Schedule NNT-2 and TF-4 to reduce their entitlement during certain months up to a stated percentage of peak month MDQ;
- Correct certain definitions in the General Terms and Conditions;
- Modify the definition of "Spot Index Price" to make it an average price throughout the month;
- Make changes and update the Request for Service information;
- Identify transporter retained storage inventory as part of system requirements for scheduling and allocation;
- Clarify Section 7.6 of the General Terms and Conditions concerning use of storage gas;
- Clarify when payment of an invoice shall be considered timely and how interest shall be charged for late payments;
- Add a section concerning the normal commercial practice of collecting of costs and expenses incurred in litigation upon favorable outcome of such action;
- Make clarification and corrections concerning points of delivery that are available under Rate Schedule NNT-1 and Points of Delivery subject to the Hourly Flexibility Surcharge;
- Add a Memphis Clause to the form of TI-1 Service Agreement;
- Revise the complaints section of the General Terms and Conditions to conform to the requirements in Rule 206 of FERC's Rules of Practice and Procedure (18 CFR 385.206);
- Capitalize defined terms and make other minor corrections and clarifications throughout the tariff.

CIG further states that copies of this filing have been served on CIG's jurisdiction customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11968 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-140-009]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Columbia Gas Transmission Corporation (Columbia) filed the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff) bearing a proposed effective date of June 1, 1999:

Second Revised Sheet No. 990
First Revised Sheet No. 99P

Columbia states that this filing is being submitted pursuant to Article VII, Section C, Accrued-But-Not-Paid Gas Costs, of the "Customer Settlement" in Docket No. GP94-02, et al., approved by the Commission on June 15, 1995 (71 FERC 61,337 (1995)). The Customer Settlement became effective on November 28, 1995, when the Bankruptcy Court's November 1, 1995 order approving Columbia's Plan of Reorganization became final. Under the terms of Article VII, Section C, Columbia is entitled to recover amounts for Accrued-But-Not-Paid Gas Costs. As directed by Article VII, Section C, the tariff sheets contained herein are being filed in accordance with Section 39 of the General Terms and Conditions of the Tariff, to direct bill the Accrued-But-Not-Paid Gas Costs that have been paid subsequent to November 28, 1995.

Columbia states that copies of its filing are available for inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia and 10 G Street, NE, Washington, DC; and have been mailed to all parties on the Commission's service list in Docket No. RP96-140, et al., and to each of Columbia's firm customers, interruptible customers, and affected state commissions. Columbia also agrees to make available for this filing the data that it was required to provide in its June 13, 1996 compliance filing in Docket No. RP96-140-002 pursuant to a protective agreement.

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 and 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11949 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-295-000]

Discovery Gas Transmission L.L.C.; Notice of Cashout Report

May 6, 1999.

Take notice that on April 30, 1999, Discovery Gas Transmission L.L.C. (Discovery) tendered for filing its annual system cashout report.

Discovery reports that in Appendix A the cashout transaction volumes and net amounts purchased from or sold to each shipper during the reporting period. Discovery states that Appendix B reports the total cashout transaction volumes and amounts purchased from and paid each Shipper under each Service Agreement during the reporting period. Discovery states that Appendix C reports the costs and revenues resulting from cash-out transactions for the reporting period. In accordance with Section 9 of the General Terms and

Conditions of Discovery's FERC Gas Tariff, any difference in the costs and revenues resulting from these transactions will be carried forward to the subsequent reporting period if such difference is less than \$400,000.

Discovery experienced a loss from cashout transactions for this reporting period in the amount of \$21,616.71. This loss will be carried forward to the subsequent reporting period.

Discovery is serving copies of the instant filing to shippers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11964 Filed 5-11-99; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99-8-23-000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on April 29, 1999 certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, Second Revised Volume No. 1, bear a proposed effective date of April 1, 1999.

The purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate

Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (Call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11971 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99-22-000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Federal Energy Regulatory Commission an interruptible Transportation Service Agreement (TSA) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Thirteenth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1-A.

El Paso states that it is submitting the TSA for Commission approval since the TSA contains provisions which differ from El Paso's Volume No. 1-A Tariff. The tariff sheet, which references the

TSA, is proposed to become effective on May 31, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11938 Filed 5-11-99; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-287-032]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1-A, to become effective May 1, 1999:

Twenty-Fourth Revised Sheet No. 30
Fifteenth Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement two negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95-6-000 and RM96-7-000.

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 and 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11951 Filed 5-11-99; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99-23-000]

Great Lakes Gas Transmission Limited Partnership; Notice of Filing

May 6, 1999.

Take notice that on April 30, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 1999:

Fourth Revised Sheet No. 3
Third Revised Sheet No. 3A
Third Revised Sheet No. 3B
Third Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to Section 154.106(c) of the Commission's regulations. The revisions to the maps reflect the addition of the Duck Creek and Solway meter stations to Great Lakes' system, additions of loop line, horsepower changes for two compressor stations, and other minor corrections.

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, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or 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. 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 in the Commission's Public Reference Room. This filing may also be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11939 Filed 5-11-99; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-2613-000]

Indeck Pepperell Power Associates; Notice of Filing

May 6, 1999.

Take notice that on April 27, 1999, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell), tendered for filing with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement (Service Agreement) between Indeck Pepperell and Aquila Energy Marketing Corporation (Aquila), dated February 1, 1999, for service under Rate Schedule FERC No. 1.

Indeck Pepperell requests that the Service Agreement be made effective as of April 1, 1999.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before May 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 99-11921 Filed 5-11-99; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP98-117-005]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, KN Interstate Gas Transmission Co. (KNI) filed to move into effect certain rates and revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1-A and First Revised Volume No. 1-C, as listed in Appendix B of its filing.

KNI states that such revised tariff sheets reflect changes in rates and tariff provisions pursuant to the Commission's order issued on March 3, 1999, in this proceeding.

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

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 and 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,*Secretary.*

[FR Doc. 99-11952 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP99-299-000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

May 6, 1999.

Take notice that on April 30, 1999, KN Interstate Gas Transmission Co. (KNI) tendered for filing numerous Tariff Sheets, listed on Appendix A to the filing, of its FERC Gas Tariff, Third

Revised Volumes No. 1-A and 1-B, as well as First Revised Volumes No. 1-C and 1-D. KNI is submitting this filing to incorporate and/or modify tariff provisions to fit the operation and administration requirements of a new computer system. Specifically, KNI's current interactive electronic system is being replaced by the Direct Access Request and Tracking System (DART).

KNI states that copies of this filing has been served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,*Secretary.*

[FR Doc. 99-11967 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP99-288-000]

KN Wattenberg Transmission L.L.C.; Notice of Tariff Filing

May 6, 1999.

Take notice that on April 30, 1999, KN Wattenberg Transmission L.L.C. (KNW) tendered for filing numerous Tariff Sheets listed on Appendix A to that filing of its FERC Gas Tariff First Revised Volume No. 1, proposed to be effective June 1, 1999. KNW is submitting this filing to incorporate and/or modify tariff provisions to fit the operation and administration requirements of a new computer system. Specifically, KNW's current interactive electronic system is being replaced by the Direct Access Request and Tracking System (DART).

KNW states that copies of this filing have been served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance).

David P. Boergers,*Secretary.*

[FR Doc. 99-11957 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP99-289-000]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Twelfth Revised Sheet No. 22, to be effective June 1, 1999.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1 (Section 21), as the twelfth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts

specifically excluded under Section 21 are not reflected in this filing.

Natural requested specific waivers of Section 21 and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit Twelfth Revised Sheet No. 22 to become effective June 1, 1999.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11958 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-454-000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

May 6, 1999.

Take notice that on May 4, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP98-454-000 a request pursuant to sections 157.205, 157.216 and 212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 212) for authorization to relocate ten (10) small volume measurement meters (farm taps) located in Minnesota, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/>

[online/rims.htm](http://www.ferc.fed.us/online/rims.htm) (call 202-208-2222 for assistance).

Northern states that service will be provided pursuant to currently effective throughput service agreement(s) and that the peak day and annual deliveries for the small volume meter customers will remain the same as presently being delivered. To minimize service interruption, as advised by Northern, Northern will relocate these farm taps to a parallel loop line before proceeding with the replacement project. The total estimated cost to relocate the farm taps delivery points is approximately \$20,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,
Secretary.

[FR Doc. 99-11934 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-292-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that Northern Natural Gas Company (Northern), on April 30, 1999, tendered for filing to become part of Northern's F.E.R.C. Gas Tariff, the following tariff sheets, proposed to be effective June 1, 1999:

Fifth Revised Volume No. 1

Third Revised Sheet No. 125D
Sixth Revised Sheet No. 144

The purpose of this filing is to modify Northern's FDD and IDD Rate Schedules applicable to firm and interruptible storage services by providing increased service flexibility through the addition

of a Field Area point available for receipt and delivery of storage services.

Copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11961 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99-3-59-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that Northern Natural Gas Company (Northern), on April 30, 1999 tendered for filing to become part of Northern's F.E.R.C. Gas Tariff the following tariff sheets proposed to become effective on June 1, 1999:

Fifth Revised Volume No. 1

Twelfth Revised Sheet No. 54
Tenth Revised Sheet No. 61
Tenth Revised Sheet No. 62
Tenth Revised Sheet No. 63
Tenth Revised Sheet No. 64

The revised tariff sheets are being filed in accordance with Section 53 of Northern's General Terms and Conditions, which requires Northern to adjust its fuel and Unaccounted for (UAF) gas percentages each June 1, and the fuel methodology set forth in the Stipulation and Agreement of Settlement filed by Northern on April 16, 1999 in Docket Nos. RP98-203, *et al.*

Copies of the filing were served upon Northern's customers and interested State Commissions.

Copies of this filing are on file with the Commission and are available for inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11970 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99-24-000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 1999:

Third Revised Sheet No. 3
Second Revised Sheet No. 3A
Second Revised Sheet No. 3B

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to reflect changes in the pipeline facilities and the points at which service is provided.

Panhandle states that a copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5400 Westheimer Court, Houston, Texas 77056-5310. In

addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11940 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-290-000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 1999:

Second Revised Sheet No. 16

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to eliminate the minimum rate for Rate Schedule GPS, Gas Parking Service.

Panhandle states that a copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5400 Westheimer Court, Houston, Texas 77056-5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or Section 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11959 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MT99-11-000 and MG99-19-000]

Pine Needle LNG Company, LLC; Notice of Filing

May 6, 1999.

Take notice that on April 29, 1999, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective May 29, 1999:

Substitute Original Sheet No. 40
Substitute Original Sheet No. 90
Original Sheet No. 91

In addition, Pine Needle has filed its Code of Conduct under Order Nos. 497, *et al.*

Pine Needle states that the purpose of the instant filing is to add Section 30 to the General Terms and conditions of Pine Needle's FERC Gas Tariff to set forth the procedures used by Pine Needle to address and resolve complaints by customers and potential customers, as required by Section 250.16(b)(2) of the regulations. The instant filing also places on file with the Commission Pine Needle's Code of Conduct, which sets forth procedures that will enable shippers and the Commission to determine how Pine Needle is complying with the standards of conduct set forth in Part 161 of the regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11943 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-200-037]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective May 1, 1999:

Original Sheet No. 70

REGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

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 and 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference

Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11950 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-282-000]

Reliant Energy Gas Transmission Company; Notice of Informal Technical Conference

May 6, 1999.

On April 12, 1999, Reliant Energy Gas Transmission Company (Reliant) filed *pro forma* tariff sheets reflecting a proposed new rate schedule providing hourly firm transportation service. This filing was noticed on April 16, 1999, and various parties filed motions to intervene containing comments on the filing. One protest was filed. In order to facilitate the resolution of the issues in this proceeding, the Commission Staff is convening an informal conference among the interested parties.

Take notice that an informal technical conference in the above-captioned proceeding will be held on Thursday, May 13, 1999, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Reliant and interested parties should be prepared to discuss in detail Reliant's proposed hourly firm transportation service in order to resolve the specific concerns raised by the parties in these proceedings.

For additional information, please contact Randy Adams at (202) 208-0102.

David P. Boergers,

Secretary.

[FR Doc. 99-11956 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-252-002]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Sea Robin Pipeline Company (Sea

Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, (Tariff) the following tariff sheets to become effective April 1, 1999:

Sixth Revised Sheet No. 35

First Revised Sheet No. 93

First Revised Fourth Revised Sheet No. 95

Sea Robin states that the purpose of this filing is to comply with the Commission's letter order dated March 31, 1999 in the above-referenced docket. Such letter order generally approved Sea Robin's tariff filing made in compliance with Order No. 587-H. Such letter order required Sea Robin (i) to incorporate by reference GISB Standard 1.3.2; (ii) to revise its tariff to provide shippers notice of bumping consistent with its OFO procedures; (iii) to waive certain daily penalties for interruptible shippers whose scheduled volumes are bumped; and (iv) to reference version 1.3 as the correct version applying to the GISB standards adopting by Order No. 587-H. Sea Robin has requested that these sheets be made effective as of April 1, 1999. Sea Robin states that copies of the filing will be served upon its shippers and interested state commissions.

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 385.211 of the Commission's Rules and 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11955 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. GT99-21-000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective June 1, 1999:

First Revised Sheet No. 3
Original Sheet No. 3A
Original Sheet No. 3B

Southwest states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to reflect the acquisition by transfer from Panhandle Eastern Pipe Line Company of the Howell, Waverly and North Hopeton storage fields as authorized in Docket No. CP97-237-000 (85 FERC ¶ 61,328).

Southwest states that a copy of this filing is available for public inspection during regular business hours at Southwest's office at 5400 Westheimer Court, Houston, Texas 77056-5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11937 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP99-293-000]

TCP Gathering Co.; Notice of Tariff Filing

May 6, 1999.

Take notice that on April 30, 1999, TCP Gathering Co. (TCP) tendered for filing numerous Tariff Sheets listed in Appendix A of its FERC Gas Tariff, Original Volume No. 1. TCP is submitting this filing to incorporate and/or modify tariff provisions to fit the operation and administration requirements of a new computer system.

Specifically, TCP's current interactive electronic system is being replaced by the Direct Access Request and Tracking System (DART).

TCP states that copies of this filing has been served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11962 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. GT99-26-000]

Tennessee Gas Pipeline Company; Notice of Filing

May 6, 1999.

Take notice that on April 30, 1999, Tennessee Gas Pipeline Company

(Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing: (1) A copy of the transportation service agreement pursuant to Tennessee's Rate Schedule FT-A (Transportation Service Agreement) entered into by Tennessee and Caledonia Power I, L.L.C., (Caledonia), (2) a copy of the balancing agreement entered into by Tennessee and Caledonia (Balancing Agreement), (3) a copy of the Firm Transportation Discount Agreement entered into by Tennessee and Caledonia ("Discount Letter Agreement"), and (4) Third Revised Sheet No. 413 of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 (Volume No. 1 Tariff). Tennessee requests an effective date of June 1, 1999.

Tennessee states that the Transportation Service Agreement and the Discount Letter Agreement reflect a negotiated rate arrangement between Tennessee and Caledonia for transportation under Rate Schedule FT-A to be effective June 1, 1999 through May 31, 2009. Tennessee also states that it is submitting the Transportation Service Agreement and the Discount Letter Agreement for Commission approval because the Discount Letter Agreement contains language which modifies the provisions of the Gas Transportation Agreement contained in Tennessee's Volume No. 1 Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11942 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission**

[Docket No. RP91-203-069]

**Tennessee Gas Pipeline Company;
Notice of Tariff Filing**

May 6, 1999.

Take notice that on April 30, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed Twentieth Revised Sheet No. 20, Twenty-first Revised Sheet No. 21A, Twenty-seventh Revised Sheet No. 22, Twenty-first Revised Sheet No. 22A, Sixteenth Revised Sheet No. 23, Eighth Revised Sheet No. 23A, Eleventh Revised Sheet No. 23B, Sixth Revised Sheet No. 23C, Twenty-second Revised Sheet No. 24, Sixteenth Revised Sheet No. 25 and Eighth Revised Sheet No. 27 to be included in its FERC Gas Tariff.

Tennessee states that this filing is in compliance with the Commission's April 16, 1999 order in Docket Nos. RP91-203-68, *et al.* Tennessee Gas Pipeline Co., 87 FERC (61,086 (1999)). Tennessee requests an effective date of May 1, 1999, for these tariff sheets. The tariff sheets will put into place rates reflecting the Commission's decision regarding the proper allocation of the New England lateral costs. Tennessee requests all waivers of the Commission's regulations that may be necessary to all this filing to become effective on May 1, 1999.

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 and 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11948 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission**

[Docket No. RP99-294-000]

**Texas Eastern Transmission
Corporation; Notice of Tariff Filing**

May 6, 1999.

Take notice that on April 30, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective June 1, 1999:

First Revised Sheet No. 702
First Revised Sheet No. 717
First Revised Sheet No. 732
First Revised Sheet No. 763
First Revised Sheet No. 766J
First Revised Sheet No. 801
First Revised Sheet No. 814

Texas Eastern states that the purpose of this filing is to revise, on a prospective basis, the forms of firm service agreement for Rate Schedules CDS, FT-1, SCT, LLFT, VKFT, SS-1 and FSS-1 to provide for a reduced minimum prior written notice requirement for termination of at least one (1) year for long-term service agreements. Texas Eastern proposes these changes to its firm forms of service agreement to be effective on a prospective basis, with such changes to be available on and after the effective date of the tariff sheets filed herein, for new service agreements executed in connection with remarketing turnback capacity subsequent to the termination of existing long-term contracts as well as superseding service agreements executed in connection with the renegotiation and extension of existing service agreements.

Texas Eastern states that copies of the filing were served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings.

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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11963 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission**

[Docket No. RP99-106-003]

**TransColorado Gas Transmission
Company; Notice of Tariff Filing**

May 6, 1999.

Take notice that on April 30, 1999, pursuant to 18 CFR 154.7 and 154.203, and in compliance with Commission letter order issued April 5, 1999, in Docket No. RP99-106-002, TransColorado Gas Transmission Company (TransColorado) tender for filing and acceptance, to be effective March 31, 1999, Substitute Second Revised Sheet No. 247 and Substitute Original Sheet No. 247A to Original Volume No. 1 of its FERC Gas Tariff.

TransColorado states that the April 5 order directed it to revise its tariff sheets to reflect that TransColorado will file with the Commission by March 1 of each year an annual fuel-reimbursement report fully detailing the operation of its fuel reimbursement mechanism for the 12-month period ending December 31 of each year.

TransColorado states that the April 5 order directed it to revise § 12.8(a) of its Fuel-Reimbursement provision to state that the monthly fuel-gas-reimbursement factor will be calculated using the most recent available actual data and is computed by adding (1) the Projected Monthly System Gas Consumption to (2) the Projected Monthly Lost and Unaccounted-For Quantities plus the Prior Month's Variance Adjustment divided by projected transportation receipts. Further, the April 5 order directed TransColorado to eliminate the first proposed sentence in § 12.8(b) and substitute a revised sentence.

TransColorado states that a copy of this filing has been served upon its customers, the official service list in Docket No. RP99-106, the New Mexico Public Utilities Commission and the Colorado Public Utilities Commission.

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 385.211 of the Commission's Rules and 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11953 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-392-000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

May 6, 1999.

Take notice that on April 29, 1999, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application pursuant to sections 7(c) of the Natural Gas Act and subpart A of part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing Transco to construct and operate facilities which will provide 204,099 dekatherms per day (dt per day) of new firm transportation capacity on Transco's system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202 208-2222 for assistance).

Transco seeks authorization of its SouthCoast Expansion Project (SouthCoast), an incremental expansion of Transco's pipeline system in its southern market area which will provide 204,099 dt per day of new firm transportation capacity on its system, by a proposed in-service date of November 1, 2000.

Specifically, Transco proposes to construct and operate the following facilities which Transco estimates will cost \$108,354,725:

1. 11.31 miles of 42-inch pipeline loop from milepost 799.95 on Transco's mainline in Choctaw County, Alabama

to Transco's Compressor Station 90 at milepost 811.26 in Marengo County, Alabama, which will include installation of a pig launcher at milepost 764.66 (upstream of the loop) and installation of a pig receiver and liquid scrubber at Station 90.

2. 13.94 miles of 48-inch pipeline loop from milepost 837.52 on Transco's mainline in Marengo County, Alabama to milepost 851.46 on Transco's mainline in Dallas County, Alabama, which will include relocation of an existing pig receiver from milepost 837.52 to milepost 851.46. A pig launcher for the loop already exists at Station 90.

3. 19.01 miles of 24-inch pipeline loop from milepost 0.00 on Transco's North Georgia Extension in Walton County, Georgia to milepost 19.01 on the North Georgia Extension in Gwinnette County, Georgia, which will include installation of a pig launcher at milepost 0.00 and installation of a pig receiver at milepost 19.01.

4. A new 15,000 horsepower gas turbine-powered compressor unit at Station 105 in Coosa County, Alabama.

5. A new 16,500 horsepower electric motor-driven compressor unit at Station 115 in Coweta County, Georgia. Also, at station 115 gas coolers will be installed which will cool the total station gas flow.

6. Unit 16 will be rewheeled at Station 120.

7. Suction piping at Station 100 will be modified to allow sufficient gas flow to Unit 10.

Transco states that the facilities, for the most part, will be installed either entirely within or immediately adjacent to Transco's existing right-of-way and compressor station yards.

Transco indicates that it held an open season from July 22, 1998, to August 24, 1998, during which it accepted requests for firm service under SouthCoast.

Transco states that as result of the open season, Transco executed precedent agreements with the following twelve shippers:

Atlanta Gas Light Company—61,160 dt per day
Georgia Power Company—40,000 dt per day
Santee Cooper—80,000 dt per day
Sylacaugh Utilities Board—4,000 dt per day
Visy Paper, Inc—4,500 dt per day
City of Buford, Georgia—3,105 dt per day
City of Covington, Georgia—1,294 dt per day
East Central Alabama Gas District—518 dt per day
City of Lawrenceville, Georgia—3,105 dt per day

City of Sugar Hill, Georgia—2,277 dt per day

City of Toccoa, Georgia—3,105 dt per day

City of Winder, Georgia—1,035 dt per day

Transco points out that the capacity covered by these precedent agreements totals 204,099, which is the capacity of SouthCoast.

Transco states that the firm transportation service under SouthCoast will be rendered under Transco's Rate Schedule FT and Part 284(G) of the Commission's regulations. Additionally, Transco states that the SouthCoast shippers will pay Transco's Rate Schedule FT rate and will also be charged any applicable charges and surcharges under Rate Schedule FT.

Transco requests that the Commission make a determination that the costs associated with the SouthCoast facilities may be rolled into Transco's cost of service in Transco's first Section 4 rate proceeding which becomes effective following the in-service of the project. Transco claims that a presumption to roll-in the SouthCoast costs applies because the rate impact on its existing customers under each firm rate schedule is less than five percent which is the level set forth in the Commission's Statement of Policy for a presumption of rolled-in rate treatment on the pricing of new pipeline construction. Transco also claims that the subject facilities will produce significant system benefits and will be fully integrated physically and operationally with Transco's existing system.

Transco requests that the Commission issue a preliminary determination approving all aspects of the subject application other than environmental matters by August 1, 1999, and a final order granting all certification by December 1, 1999.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before May 27, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing

therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order.

However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is time filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Transco to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99-11933 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99-25-000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

May 6, 1999.

Take notice that on April 28, 1999, Transcontinental Gas Pipe Line Corporation (Transco) filed a report reflecting the flow through of refund received from CNG Transmission Corporation (CNG).

On February 12, 1999, in accordance with Section 4 of its Rate Schedule FTNT, Transco states that it refunded to its FTNT customer, New York Power Authority, \$133,300 resulting from the estimated refund of CNG Transmission Corporation's Docket No. RP97-406, et al and on April 1, 1999 Transco refunded \$35,334.25 to the same customer which is a true-up for this refund. The refund covers the period from January 1998 to January 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11941 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-291-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective November 1, 1999.

On September 25, 1998, as amended on October 5, 1998, Transco filed an application to abandon Rate Schedule LG-A service provided to PG Energy, Inc. and Philadelphia Gas Works and to provide increased service under Rate Schedule LG-A to NUI Corporation. On October 30, 1998, the Commission granted approval of the abandonment of service to PGE and PGW, but dismissed Transco's request to provide increased service to NUI. On November 6, 1998, Transco filed a petition requesting that the Commission grant authorization to provide service to NUI on a temporary basis. The Commission issued an order on November 12, 1998 granting Transco's request for a limited-term certificate. In compliance with the November 12 Order, Transco is filing to (1) implement two new Part 284 services, Rate Schedule LNG (Liquefied Natural Gas Storage Service) and Rate Schedule LNG-R (Released Liquefied Natural Gas Storage Services) and (2) modify the rate and the General Terms and Conditions tariff sheets to incorporate these new services.

In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas. In addition, Transco is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, see First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11960 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-296-000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 1999.

Ninth Revised Sheet No. 13

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to eliminate the minimum rate for Rate Schedule GPS, Gas Parking Service.

Trunkline states that a copy of this filing is available for public inspection during regular business hours at Trunkline's office at 5400 Westheimer Court, Houston, Texas 77056-5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 Rules and Regulations. All such motions or 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11965 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-2631-000, et al.]

Northeast Utilities Service Company, et al. Electric Rate and Corporate Regulation Filings

May 3, 1999.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Company

[Docket No. ER99-2631-000]

Take notice that on April 28, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Constellation Power Source, Inc. (Constellation), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO requests that the Service Agreement become effective March 31, 1999.

NUSCO states that a copy of this filing has been mailed to Constellation.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Delmarva Power & Light Company

[Docket Nos. ER97-3189-022 and OA97-586-001]

Take notice that on April 28, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a revised compliance refund report for the City of Easton, Maryland (Easton), to correct a miscalculation in the original compliance refund report.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company

[Docket Nos. ER97-3189-023 and OA97-586-002]

Take notice that on April 28, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a revised compliance refund report for the City of Dover, Delaware (Dover) to correct a miscalculation in the original compliance refund report.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER99-2632-000]

Take notice that on April 28, 1999, FirstEnergy Corp. (FirstEnergy), tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service and an Operating Agreement for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with Public Service Electric and Gas Company pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is April 1, 1999.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER99-2633-000]

Take notice that on April 28, 1999, Public Service Company of New Mexico (PNM), tendered for filing two executed service agreements, dated April 21, 1999, with the Incorporated County of Los Alamos (County), under the terms of PNM's Open Access Transmission Service Tariff (OATT). One agreement is for firm point-to-point transmission service, and supersedes an existing service agreement between PNM and County, dated December 1, 1996. Under the service agreement PNM provides County with firm point-to-point transmission service from PNM's San Juan Generating Station 345 kV Switchyard (point of receipt) to PNM's Norton or ETA points of interconnection with County. The other agreement is a Control Area Service Agreement, which incorporates certain sections of PNM's OATT, and replaces Service Schedule H (SS H), of the Interconnection Agreement between PNM and County. Both agreements are to take effect on the same date that the Notice of Termination for SS H (which is being filed concurrently under separate cover) takes effect. PNM's filings are available for public inspection at PNM's offices in Albuquerque, New Mexico.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER99-2634-000]

Take notice that on April 28, 1999, Public Service Company of New Mexico (PNM), tendered for filing a Notice of Termination of Service Schedule H, Area Control Services and Metering (Supplement No. 7 to PNM Rate Schedule FERC No. 60), to the Interconnection Agreement between PNM and Incorporated County of Los Alamos (County), dated November 26, 1984. Termination of the Service Schedule is to be effective on the same date as PNM's new service agreements (under PNM's Open Access Transmission Tariff) for firm point-to-point transmission and control area service with County take effect. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER99-2636-000]

Take notice that on April 28, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Town of Danvers Electric Division (Danvers).

NUSCO states that a copy of this filing has been mailed to Danvers.

NUSCO requests that the rate schedule change become effective on May 1, 1999.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and Light Company West Texas Utilities Company Public Service Company of Oklahoma Southwestern Electric Power Company

[Docket No. ER99-2638-000]

Take notice that on April 28, 1999, Central and South West Services, Inc., as agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing a quarterly report under the CSW Operating Companies' market-based sales tariff. The report is for the period January 1, 1999 through March 31, 1999.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER99-2639-000]

Take notice that on April 28, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Merchant Energy Group of the Americas, Inc. (MEGA), under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO requests that the Service Agreement become effective May 1, 1999.

NUSCO states that a copy of this filing has been mailed to MEGA.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. NYSEG Solutions, Inc.

[Docket No. ER99-2641-000]

Take notice that on April 28, 1999, NYSEG Solutions, Inc., tendered for filing a Summary of Quarterly Activity for the calendar year quarter ending March 31, 1999, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's December 14, 1998, order in Docket No. ER99-220-000.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. South Glens Falls Energy, LLC

[Docket No. ER99-2642-000]

Take notice that on April 28, 1999, South Glens Falls Energy, LLC, tendered for filing a Summary of Quarterly Activity for the calendar year quarter ending March 31, 1999, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 35, and in accordance with Ordering Paragraph H of the Federal Energy Regulatory Commission's March 11, 1999, order in Docket No. ER99-1261-000.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER99-2643-000]

Take notice that on April 28, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Morgan Stanley Capital Group, Inc. (MSCG), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO requests that the Service Agreement become effective April 1, 1999.

NUSCO states that a copy of this filing has been mailed to MSCG.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER99-2644-000]

Take notice that on April 28, 1999, New England Power Company (NEP), tendered for filing a Notice of Cancellation of the Unit Power Contract between NEP and Holden Municipal Light Department, FERC Electric Rate Schedule No. 408.

NEP requests that cancellation be effective the April 30, 1999.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. American Transmission Systems, Inc.

[Docket No. ER99-2647-000]

Take notice that on April 28, 1999, American Transmission Systems, Inc., tendered for filing an application to establish initial rates charged for transmission service under the American Transmission Systems, Inc.'s Open Access Tariff. Included as part of the filing is an amendment to the Joint Dispatch Agreement among the FirstEnergy Operating Companies and American Transmission Systems, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Mid-Continent Area Power Pool

[Docket No. ER99-2649-000]

Take notice that on April 28, 1999, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, tendered for filing MAPP's amended Line Loading Relief procedure, incorporating procedures to curtail generation to load deliveries and amending procedures to curtail non-firm point-to-point transmission service.

MAPP requests an effective date of June 1, 1999, with regard to the changes to implement generation to load curtailments.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER99-2664-000]

Take notice that on April 28, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 2.0 MW of New York Power Authority power to Encore Paper. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96-194-000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of April 1, 1999. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER99-2665-000]

Take notice that on April 28, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its market-based rate tariff (FERC Electric Tariff, Original Volume No. 8). The revisions are being made to reflect the consummation of the merger involving Wisconsin Electric and Edison Sault Electric Company (Edison Sault), to treat Wisconsin Electric and Edison Sault as operating companies, and apply the code of conduct to transactions between them and non-operating affiliates.

Copies of the filing have been served on customers under the market-based rate tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Excell Energy Services, Inc.

[Docket No. ER99-2666-000]

Take notice that on April 28, 1999, Excell Energy Services, Inc., tendered for filing notice that the company was dissolved in 1995 and advises that it no

longer operates as a power marketer. Excell Energy Services, Inc., requests termination of Power Rate Schedule 1.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Central Illinois Light Company

[Docket No. ER99-2667-000]

Take notice that on April 28, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a revised substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and a revised service agreement with one customer, Corn Belt Electric Cooperative, Inc.

CILCO requested an effective date of April 1, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-11922 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8083-005]

George and Arminda Briggs; Notice of Availability of Environmental Assessment

May 6, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application for the proposed Surrender of Exemption for the Briggs Hydroelectric Project, located in Fremont County, Idaho, and has prepared an Environmental Assessment (EA) for the proposed action.

In the EA, the Commission's staff analyzed the potential environmental impacts of the proposed action. The staff concluded that approval of the subject surrender of exemption would not produce any adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208-1371. The EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208-2222 for assistance.

For further information, please contact Jim Haimes at (202) 219-2780.

David P. Boergers,

Secretary.

[FR Doc. 99-11947 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232-364]

Duke Energy Corporation; Notice of Availability of Draft Environmental Assessment

May 6, 1999.

A draft environmental assessment (DEA) is available for public review. The DEA analyzes the environmental impacts of constructing 130 boat slips and a boat access ramp on 3.627 acres of land within the Catawba-Wateree

Hydroelectric project boundary. Duke Energy Corporation, licensee for the project, proposes to lease the land to Mt. Isle Harbor Boat Slip Association. The site of the proposed boat slips and ramp is in the Paw Creek Township on Mountain Island Lake in Mecklenburg County, North Carolina. The slips and ramp would be constructed to accommodate residents of Mt. Isle Harbor Subdivision.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. The DEA may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (please call (202) 208-2222 for assistance).

Please submit any comments on the DEA within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation. Comments should be addressed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Please affix Project No. 2232-364 to all comments.

David P. Boergers,

Secretary.

[FR Doc. 99-11945 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-150-000 and CP98-151-000]

Millennium Pipeline Company, L.P. and Columbia Gas Transmission Corporation; Notice of Change of Location for Scoping Meeting and Notice of Site Visit

May 6, 1999.

The location for the following draft environmental impact statement comment meeting for the Millennium Pipeline Project has been changed. The meeting to be held in Yonkers, New York, on Tuesday, May 18, 1999, has been changed from the Mark Twain Junior High School to the following facility: Yonkers Public Library, 1500 Central Park Avenue, Yonkers, New York 10710, (914) 337-1500.

On Thursday, May 20, 1999, the Federal Energy Regulatory Commission

staff will conduct a limited site visit at a few locations between approximate mileposts 242 and 243.5 of the proposed Millennium Pipeline Project. A memorandum summarizing locations visited and issues discussed during the inspection will be filed in the public record for these dockets.

Participants on the site visit will meet at 8:30 a.m. at: Days Inn, 1000 Front Street, Binghamton, NY 13905, (607) 724-3297.

For further information, call Paul McKee, Office of External Affairs, at (202) 208-1088.

David P. Boergers,

Secretary

[FR Doc. 99-11932 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions to Intervene, and Protests

May 6, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Applicaton Type:* Declaration of Intention.

b. *Docket No:* DI99-3-000.

c. *Date Filed:* April 2, 1999.

d. *Applicant:* City of Atka, Alaska.

e. *Name of Project:* Chuniisax Creek Hydropower Project.

f. *Location:* On Chuniisax Creek, one-half mile southwest of the old town portion of the City of Atka, 1,100 miles southwest of Anchorage on Atka Island, Alaska, T92S R176W, Seward Meridian. The proposed project does not utilize federal lands. It will be located on native corporation lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. *Applicant Contact:* Mrs. Julie Dirks, City Administrator, City of Atka, Post Office Box 765, Unalaska, Alaska 99685 (907) 581-6226.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton at (202) 219-2678, or e-mail address: henry.ecton@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 17, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

Please include the docket number (DI99-3-000) on any comments or motions filed.

k. *Description of Proposed Project:* The proposed run-of-river project will consist of a 13-foot-high, 80-foot-wide diversion dam; a penstock consisting of a 1,060-foot-long, 28-inch HDPE pipe; a 16-foot-by-18-foot powerhouse, containing a 271 kW cross-flow turbine; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208-1371. This filing may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

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 and .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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", 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 at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

David P. Boergers,

Secretary.

[FR Doc. 99-11935 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions to Intervene, and Protests

May 6, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI99-4-000.

c. *Date Filed:* March 15, 1999.

d. *Applicant:* Bruce Cox.

e. *Name of Project:* Cox Lake Hydro Project.

f. *Location:* On Deep River, near Cedar Falls, in Randolph County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825 (r).

h. *Applicant Contact:* Mr. Bruce Cox, 5666 Hinshaw Town Road, Ramseur, NC 27316, (336) 879-4267.

i. *FERC Contact:* Any questions on this notice should be addressed to Etta Foster at (202) 219-2679, or e-mail address: etta.foster@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 16, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the docket number (DI99-4-000) on any comments or motions filed.

k. *Description of Project:* The existing run-of-river project consists of a 248-acre-foot reservoir; a 24-foot-high, 280-foot-wide concrete and stone-masonry gravity dam, with 1.7-foot-high flashboards; a 35-foot-long, 45-foot-high reinforced concrete powerhouse containing two generators rated at 250 kW and 125 kW; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208-1371. This filing may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

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 and .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.

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 at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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 any 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.

David P. Boergers,

Secretary.

[FR Doc. 99-11936 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Meetings and Site Visit

May 6, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 1864.

c. *Date Filed:* March 5, 1985.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Bond Falls Project.

f. *Location:* On the west branches of the Ontonagon River, a tributary of western Lake Superior, in Ontonagon and Gogebic Counties, Michigan, and a small portion of Vilas County in northern Wisconsin. The project is partially located on the Ottawa National Forest, which is federal land administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Max O. Curtis, Upper Peninsula Power Company, 600 Lakeshore Drive, P.O. Box 130, Houghton, MI 49931-0130, (906) 487-5063.

i. *FERC Contact:* Frankie Green, e-mail address: frankie.green@ferc.fed.us, (202) 501-7704.

j. Parties to this relicensing proceeding recently provided Commission staff with a draft Offer of Settlement for this project. The parties anticipate finalizing the Offer of Settlement by mid-1999. Commission staff and parties to the settlement will host a site visit and two public meetings to discuss the draft Offer of Settlement for the Bond Falls Project. All interested individuals, organizations, and agencies are invited to attend the site visit and either of the meetings and discuss any issues or concerns with the draft Offer of Settlement.

The site visit by Commission staff and other interested parties is planned for May 25, 1999, to familiarize staff and other parties with elements included in the draft offer of Settlement. The visit will begin at 9:00 AM, EDT, at the Forest Service's Watersmeet, MI office parking lot. Any one wishing to accompany Commission staff as invited to attend.

Both meetings will be held on Wednesday, May 26, 1999. The first meeting will be held at the Best Western Porcupine Mountain Lodge in Silver City, MI from 1:00 PM to 4:00 PM, EDT. The second meeting will be held at the Sylvania Visitor Center in Watersmeet, MI from 8:00 PM to 11:00 PM, EDT.

The meetings will be recorded by a stenographer, and the transcripts will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcript of the meetings may contact Ace Federal Reporting Company by calling (202) 347-3700 or by writing to 1120 G Street, N.W., Washington, D.C. 20005.

Any comments on the draft Offer of Settlement or any other concerns with the Bond Falls project should be submitted to the Commission no later than June 18, 1999.

All written comments (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The Bond Falls project consists of four developments on the Middle Cisco (South), and West branches of the Ontonagon River. Each project development consists of a storage reservoir or lake, a main dam or dams, and appurtenant facilities. The four project water bodies are Bond Falls flowage, Lake Gogebic (Bergland development), Cisco Chair-of-Lakes, and Victoria reservoir. The Bond Falls, Bergland, and Sisco Developments provide seasonal reservoir storage and diversion of the river flow to the Victoria development, where the flow is used to generate power.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at the address in item h above and may be viewed on the web at <http://WWW.ferc.fed.us/online/rims.htm> (please call (202) 208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-11944 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

May 6, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2634-007.

c. *Date Filed:* April 28, 1998.

d. *Applicant:* Great Northern Paper, Inc.

e. *Name of Project:* Storage Project.

f. *Location:* The four-reservoir project is located on Ragged Stream, Caucomgomoc Stream, the West Branch, and the South Branch of the Penobscot River in Somerset and Piscataquis Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. *Applicant Contact:* Mr. Brian R. Stetson, Manager, Environmental

Affairs, Great Northern Paper, Inc., One Katahdin Avenue, Millinocket, ME 04462, (207) 723-2664.

i. *FERC Contact:* Any questions on this notice should be addressed to John Costello, E-Mail address, john.costello@ferc.fed.us, or telephone (202) 219-2914.

j. *Deadline for filing scoping comments:* August 3, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The Storage Project consists of four dams and associated storage reservoirs including Canada Falls Lake, Seboomook Lake, Caucomgomoc Lake, and Ragged Lake, located in the West Branch of the Penobscot River drainage basin. There are no hydroelectric generating facilities at the Storage Project developments.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

h. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) for the proposed relicensing of the Storage Project (FERC No. 2634) in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Scoping Meetings

The Commission will hold scoping meetings for the Storage Project, one in the daytime and one in the evening, to

help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Thursday, June 3, 1999, 1:00 p.m., Trail Side Restaurant at the Leisure Life Resort, Leisure Life Resort Road, Greenville, Maine

Evening Meeting

Thursday, June 3, 1999, 7:00 p.m., Trail Side Restaurant at the Leisure Life Resort, Leisure Life Resort Road, Greenville, Maine

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Wednesday, June 2, 1999. We will meet at the public boat launch on Route 16 located approximately 2 miles west of Greenville, Maine at 7 a.m. If you would like to attend, please call Ed Speer, Great Northern Paper, Inc. at (207) 723-2698, no later than May 28, 1999.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the

meeting starts and to identify themselves clearly for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

All questions concerning the scoping process should be directed to John Costello E-mail address, john.costello@ferc.fed.us, or telephone at (202) 219-2914.

David P. Boegers,

Secretary.

[FR Doc. 99-11946 Filed 5-11-99; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6341-4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Roster of Environmental Dispute Resolution and Consensus Building Professionals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: The National Roster of Environmental Dispute Resolution and Consensus Building Professionals, EPA ICR No. 1888.01, new collection. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1888.01.

SUPPLEMENTARY INFORMATION:

Title: National Roster of Environmental Dispute Resolution and Consensus Building Professionals (EPA ICR No. 1888.01.). This is a new collection.

Abstract: This ICR pertains to the application form for listing facilitators, mediators and other similar

professionals on a National Roster for Environmental Dispute Resolution and Consensus-Building Professionals ("roster"). This information will be collected by the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation ("Institute"). The EPA is funding the initial development of the roster which will be managed by the Institute. Submittal of an application form is voluntary and not required for ultimate selection by the government as a neutral in any specific case.

The application form will collect information about the experience and education of professionals engaged in assisting disputants in reaching consensus, agreements or settlements of environmental and natural resource conflicts. The information needed to complete the roster application is generally what would be found on a resume or curriculum vita or provided in reply to a request for proposal. The form does not collect any confidential information.

The roster will be used by Federal agencies to identify qualified individuals with whom to contract for neutral consensus building and dispute resolution services. Other parties such as state government agencies, private companies and public interest organizations may use the Roster to identify appropriate qualified individuals for cases.

Collecting the information on a form will standardize the responses received from numerous applicants into a computer database which may then be searched on a number of fields important to potential clients of dispute resolution services. Such searchable fields would include, among other things, geographic location, specialized past experience and skill in languages. We expect that a computerized database of experienced neutrals will reduce the time necessary for Federal agencies to identify and contract with dispute resolution service providers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/23/98 (63 FR 64699); 6 comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.9 hours per

respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilitators, Mediators, including attorney-mediators; Arbitrators; Retired judges; Other consensus building professionals.

Estimated Number of Respondents: 500.

Frequency of Response: Once, with voluntary updates.

Estimated Total Annual Hour Burden: 458 hours.

Estimated Total Annualized Cost (non-labor costs) Burden: \$ 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1888.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 6, 1999.

Richard T. Westlund,
Acting Director, Regulatory Information Division.

[FR Doc. 99-12010 Filed 5-11-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6341-3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463,

notice is hereby given that the Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public teleconference meeting on Thursday, May 27, 1999, between the hours of 12:00 noon and 2:00 p.m., Eastern Time.

The meeting will be coordinated through a conference call connection in Room 3709 of the Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 260-4126, and via e-mail at: tillery-priscilla@epa.gov by May 21, 1999.

During this meeting the Executive Committee plans to review draft reports from its Committees. Anticipated drafts include: (a) Review of Data from the Testing of Human Subjects (SAB/SAP Joint Subcommittee); (b) Review of the Cancer Risk Assessment Guidelines (EC Subcommittee); (c) Advisory on the Charter for Environmental Regulatory Monitoring (EC Subcommittee); (d) Advisory on Addressing Risks from Indoor Radon (Radiation Advisory Committee); (e) Commentary on Environmental Risks of Natural Hazards (Environmental Engineering Committee); and (f) Commentary on the Need to Address Source Reduction and Control Technology in PM2.5 Research Plans (Environmental Engineering Committee). It is possible that other draft reports may be available for review at this meeting as well. Please check with Ms. Tillery-Gadson prior to the meeting to confirm any changes in the planned review schedule.

FOR FURTHER INFORMATION: Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260-4126; FAX (202) 260-9232; and via e-mail at: barnes.don@epa.gov. Copies of the draft reports are available from the same source, or from the SAB Website (<http://www.epa.gov/sab>) at least one week prior to the meeting.

General Information on Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual

or group making an oral presentation at will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (<http://www.epa.gov/sab>) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260-4126 or via fax at (202) 260-1889.

Meeting Access

Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 5, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99-12009 Filed 5-11-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00595; FRL-6076-3]

Ecological Committee for FIFRA Risk Assessment Methods Scientific Peer Input Workshop on Probabilistic Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) will hold a public workshop to review The Ecological Committee for FIFRA Risk Assessment Methods' (ECOFRAM) proposed probabilistic tools and methods for

evaluating the impact of pesticides on aquatic and terrestrial non-target organisms.

DATES: The Aquatic workshop will be held on Tuesday, 22 June 1999, from 8:30 a.m. to 5:00 p.m. and Wednesday, 23 June 1999, from 8:00 a.m. to 12:00 p.m. The Terrestrial workshop will be held on Wednesday, 23 June 1999, from 1:00 pm to 5:00 p.m. and Thursday, 24 June 1999, from 8:00 a.m. to 4:00 p.m..

ADDRESSES: The meeting will be held at: the Old Town Holiday Inn Select, 480 King Street (corner of King and Royal Streets), Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: By mail: Ingrid Sunzenauer (7507C), or Gail Maske (7507C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Telephone numbers and e-mail addresses are as follows: Ingrid Sunzenauer (703) 305-5196, Sunzenauer.Ingrid@epamail.epa.gov; and Gail Maske (703) 305-5245, maske.gail@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic Availability: Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under "Laws and Regulations" (<http://www.epa.gov/fedrgrstr/>).

A copy of the prepared ECOFRAM draft reports can be obtained from the information contacts or electronically from OPP's Home Page under Pesticide Science, Ecological Risk Assessment Page, (<http://www.epa.gov/oppefed1/ecorisk/index.htm>) after May 20, 1999.

II. Purpose and Scope of the Scientific Workshop

The purpose of the workshop is to discuss the scientific aspects of the probabilistic tools and methods for evaluating effects of pesticides to non-target species developed by the Terrestrial and Aquatic ECOFRAM Workgroups. Peer input reviews and comments will be presented by an invited group of scientists followed by a discussion session with ECOFRAM workgroup members. These participants in the workshop will include OPP's Environmental Fate and Effects Division, EPA's Office of Research and Development, members of some state governments and academia, and other stakeholders (some international interested parties). All have prepared reviews of the ECOFRAM's Draft Reports on probabilistic tools and methods for ecological risk assessment.

The workshop will focus on the technical reviews by the invited participants. Outside observers (interested parties who were not part of the technical review) will have an opportunity to comment on scientific and technical issues related to the document after the initial presentations. Additional comments may also be made at the closing discussions, after the reviewers have discussed the issues raised. OPP plans to discuss the results of this peer review workshop and related issues with the Federal Insecticide, Fungicide, and Rodenticide (FIFRA) Scientific Advisory Panel at a later date.

List of Subjects

Environmental protection.

Dated: April 19, 1999.

Elizabeth Leovey,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 99-11715 Filed 5-11-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6341-5]

Extrapolation of the Benzene Inhalation Unit Risk Estimate to the Oral Route of Exposure and IRIS Summary for Benzene

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and public comment period.

SUMMARY: The U. S. Environmental Protection Agency (EPA) is announcing a 30-day public comment period to review the draft documents entitled, Extrapolation of the Benzene Inhalation Unit Risk Estimate to the Oral Route of Exposure (NCEA-W-0517) and the IRIS [Integrated Risk Information System] Summary for Benzene. The documents were prepared by the EPA's National Center for Environmental Assessment-Washington Office (NCEA-W) of the Office of Research and Development. EPA will use comments and recommendations from the public to assist in revising the document.

DATES: The comment period begins May 12, 1999 and ends June 11, 1999.

ADDRESSES: The documents are available on the Internet at <http://www.epa.gov/ncea> under the What's New and Publications menus. A limited number of paper copies are available from the Technical Information Staff (8623D), NCEA-W, telephone: 202-564-

3261; facsimile; 202-565-0050. If you are requesting a paper copy, please provide your name, mailing address, and the document titles, Extrapolation of the Benzene Inhalation Unit Risk Estimate to the Oral Route of Exposure (NCEA-W-0517) and IRIS Summary for Benzene.

Comments may be mailed to the Technical Information Staff (8623D), NCEA-W, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, N.W., 5th Floor, Washington, DC 20074; telephone number 202-564-3261; facsimile: 202-565-0050. Comments should be in writing and must be postmarked by June 11, 1999. Please submit one unbound original with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be sent to benzene.new@epa.gov.

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact Bob Sonawane (202-564-3292) or David Bayliss, (202-564-3294); mailing address: NCEA-W (8623D), U. S. Environmental Protection Agency, 401 M. Street, S.W., Washington, DC 20460; facsimile: 202-565-0078; e-mail: benzene.new@epa.gov.

SUPPLEMENTARY INFORMATION: The National Center for Environmental Assessment-Washington Division, Office of Research and Development, prepared this document on the Extrapolation of the Benzene Inhalation Unit Risk Estimate to the Oral Route of Exposure. This document will serve as a source for updating the oral cancer unit risk estimate for benzene in the Integrated Risk Information System (IRIS).

Dated: April 29, 1999.

Arthur Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 99-12004 Filed 5-11-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[42 U.S.C. Section 122(i) FRL-6340-8]

Proposed Administrative Agreement and Covenant Not To Sue**AGENCY:** U.S. Environmental Protection Agency (U.S. EPA).**ACTION:** Proposal of Administrative Agreement and Covenant Not to Sue Under Section 122(h) of CERCLA for the Murray Machinery, Inc. Superfund Site.

SUMMARY: U.S. EPA is proposing to execute an Administrative Agreement and Covenant Not to Sue (Agreement) under Section 122 of CERCLA for the Murray Machinery Superfund Site. Respondent has agreed to pay \$24,028.58 out of total response costs of approximately \$2.4 million, and in return will receive a covenant not to sue and contribution protection from U.S. EPA. U.S. EPA today is proposing to execute this Agreement because it achieves a benefit for the community where the site is located by encouraging the reuse or redevelopment of property at which the fear of Superfund liability may have been a barrier. The Murray Machinery Site would likely have remained an abandoned lot had U.S. EPA not entered into this Agreement and Covenant Not to Sue with the Prospective Purchasers. Therefore, this Agreement, although one which does not recover a significant amount of past response costs, does provide for the reuse and redevelopment of the Site.

DATES: Comments on this proposed settlement must be received by June 11, 1999.**ADDRESSES:** A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Ms. Allison S. Gassner at (312) 886-2250, prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Allison S. Gassner, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C-14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Allison S. Gassner at (312) 886-2250, of the U.S. EPA, Region 5, Office of Regional Counsel.**SUPPLEMENTARY INFORMATION:** The Murray Machinery Site is located at 901 South 60th Street and is comprised of approximately 140 acres. The Site is located in a light commercial area approximately three miles west of Wausau, Wisconsin. The site is located at the end of a semi-secluded dirt road

with a locked gate across the roadway; however, the perimeter of the site is not fenced. The Site is bordered by a section of the Chicago and Northwestern Railroad and commercial property to the north. The remainder of the Site is bordered by a heavily vegetated field and wetlands areas, with the Big Rib River located approximately 1/4 mile to the southwest along the property boundary. A shallow wetlands area is located approximately 1/8 mile southwest of the Site.

Murray Machinery, Inc. ("MMI") operated a foundry at the Site from 1972 through 1988, which consisted of the ferrous casting of ductile iron, ni-hard, and hi-chrome metals. Although never licensed as a waste disposal facility, MMI disposed of lead contaminated wastes in a surface impoundment during its years of operation. MMI is now dissolved. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. 9601(14), were released into the environment at or from the Site, posing a risk to human health or the environment.

In July 1993, the U.S. EPA and the Technical Assistance Team ("TAT") conducted a removal site assessment on the surface impoundment at the request of the Wisconsin Department of Natural Resources ("WDNR"). Concurrently, the WDNR conducted a groundwater and area surface water investigation on and around the MMI property. On October 12, 1994, U.S. EPA and TAT mobilized to the Site to conduct a time critical removal action. As of March 11, 1995, approximately 13,000 cubic yards of sediment were excavated and 11,500 cubic yards were stabilized. On June 30, 1995, U.S. EPA requested an emergency exemption from the One Year & \$2 million statutory limit and a ceiling increase to complete the time critical removal action for the Site. Additional funding was requested to complete the necessary removal activities not anticipated in the September 12, 1994 Action Memorandum. The additional funding was needed to stabilize the remaining 1500 cubic yards of lead contaminated waste and to place a clay cap over the stabilized material.

In performing response actions at the Site, U.S. EPA incurred response costs at or in connection with the Site. U.S. EPA incurred approximately \$2.4 million in conducting the removal action at the Site.

The Settling Parties are purchasers of the property who intend to reuse, redevelop, and resell the property.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed Agreement pursuant to Section 122(i) of

CERCLA, 42 U.S.C. 9622(i). Comments should be sent to the addressee identified in this notice.

William E. Muno, Director,*Superfund Division, U.S. Environmental Protection Agency, Region 5.*

[FR Doc. 99-12008 Filed 5-11-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6341-1]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Tulalip Landfill Superfund Site**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve past and estimated future liabilities of one de minimis party for costs incurred, or to be incurred, by EPA at the Tulalip Landfill Superfund Site in Marysville, Washington.

DATES: Comments must be provided on or before June 11, 1999.**ADDRESSES:** Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, ORC-158, 1200 Sixth Avenue, Seattle, Washington 98101, and should refer to In Re Tulalip Landfill Superfund Site, Marysville, Washington, U.S. EPA Docket No. 10-99-0002-CERCLA.**FOR FURTHER INFORMATION CONTACT:** Elizabeth McKenna, Office of Regional Counsel (ORC-158), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-0016.**SUPPLEMENTARY INFORMATION:**

In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Tulalip Landfill hazardous waste site located on Ebey Island between Steamboat Slough and Ebey Slough in the Snohomish River delta system between Everett and Marysville, Washington. The Site was

listed on the National Priorities List ("NPL") on April 25, 1995. 60 FR 20350 (April 25, 1995). Subject to review by the public pursuant to this document, the agreement has been approved by the United States Department of Justice. The party who has executed the proposed Administrative Order on Consent is Fog-Tite, Inc.

The EPA is entering into this agreement under the authority of sections 122(g), 106 and 107 of CERCLA, 42 U.S.C. 9622(g), 9606 and 9607. Section 122(g) authorizes settlements with de minimis parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with a party in the Tulalip Landfill case who is responsible for less than 0.2% of the volume of hazardous substances at the site.

In February and March 1988, EPA contractor Ecology & Environment, Inc. ("E&E") performed a site inspection of the landfill for NPL evaluation. The inspection revealed groundwater contamination with unacceptably high levels of arsenic, barium, cadmium, chromium, lead, mercury, and silver. Water samples taken in the wetlands adjacent to the site showed exceedences of marine chronic criteria for cadmium, chromium, and lead, as well as exceedences in marine acute criteria for copper, nickel, and zinc. In addition, a variety of metals were found in on-site pools and leachate. The study concluded that contamination was migrating off site. On July 29, 1991, EPA proposed adding the Tulalip Landfill to the NPL, and on April 25, 1995, with the support of the Governor of the State of Washington and the Tulalip Tribes of Washington, EPA published the final rule adding the Site to the NPL.

EPA performed a Remedial Investigation ("RI") and Feasibility Study ("FS") in two parts pursuant to an Administrative Order on Consent with several potentially responsible parties. The first part evaluated various containment alternatives for the landfill source area, which includes approximately 147 acres in which waste was deposited. The second part evaluated the off-source areas, which include the wetlands and tidal channels that surround the landfill source area.

On March 1, 1996, EPA issued a Record of Decision that selected an interim remedial action for the source area. The selected interim remedy requires installation of an engineered, low-permeability cover over the source area of the landfill, at an estimated cost of \$25.1 million. On September 29, 1998, EPA issued a Record of Decision

that selected the final remedial action for the source and off-source areas. The selected final remedy requires completion of the cover over the source area and placement of signs in the off-source area. The estimated cost of the signs is approximately \$15,000.

The proposed settlement is based on the Final Allocation Report issued by the allocator in the allocation process conducted for the Site. Fog-Tite was the only de minimis party to actively participate in the allocation and the only de minimis party to accept a settlement based on the allocation report.

The proposed settlement requires the settling party to pay a fixed sum of money based on its volumetric share. The total amount to be recovered from the proposed settlement is \$2,471. The amount paid will be deposited in the Tulalip Landfill Special Account within the EPA Hazardous Substances Superfund to be used for the cover over the source area at the landfill. Upon full payment, the settling party will receive a release from further civil or administrative liabilities for the Site and statutory contribution protection under section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5).

EPA will receive written comments relating to this proposed settlement for a period of thirty (30) days from the date of this publication.

The proposed agreement may be obtained from Cindy Colgate, Office of Environmental Cleanup (ECL-113), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1815. The Administrative Record for this settlement may be examined at the EPA's Region 10 office located at 1200 Sixth Avenue, Seattle, Washington 98101, by contacting Bob Phillips, Superfund Records Manager, Office of Environmental Cleanup (ECL-110), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6699.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 41 U.S.C. 9601-9675.

Jane Moore,

Acting Regional Administrator, Region 10.

[FR Doc. 99-12006 Filed 5-11-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6340-9]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that a petition was received from the State of New Jersey on April 3, 1998 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92-500, as amended by Public Law 95-217 and Public Law 100-4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Navesink River, County of Monmouth, State of New Jersey.

This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with the Navesink Regional Environmental Council. Members of the Council include the Borough of Fair Haven, the Township of Middletown, the Borough of Red Bank, the Borough of Rumson, the Borough of Tinton Falls, the Township of Holmdel, the Township of Colts Neck, the Township of Freehold and the Township of Marlboro. The Council worked in conjunction with Clean Ocean Action, Marine Development USA, Inc.; Marine Trade Association of New Jersey, Monmouth County Health Department, Monmouth County Planning Board, New Jersey Marine Sciences Consortium, New Jersey Sea Grant Advisory Service, New Jersey State Police Marine Division, U.S. Coast Guard Auxiliary and the U.S. Coast Guard. Upon receipt of an affirmative determination in response to this petition, NJDEP would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Navesink River in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Navesink River, located in central New Jersey, is part of the Hudson-Raritan Bay Estuary and drains approximately 95 square miles of urban/suburban residential development and agricultural lands. The Navesink River runs easterly from Red Bank, New Jersey and then joins the Shrewsbury River and empties into Sandy Hook Bay. The tidal waters of the Navesink River extend from the Shrewsbury River, near

Sea Bright, upstream to the Swimming River Reservoir dam. The Navesink River has been identified as a waterbody of national significance and is part of the New York-New Jersey Harbor Estuary Program. The proposed No Discharge Area (NDA) would include all tidal waters of the Navesink River which extend from the Shrewsbury River, near Sea Bright, upstream to the Swimming River Reservoir dam. The eastern boundary of the NDA is a line from Lat./Long. 73°58'45", 40°22'40" to Lat./Long. 73°58'58", 40°23'04". The western boundary of the NDA is at Lat./Long. 74°06'48", 40°19'12".

Information submitted by the State of New Jersey and the Navesink Regional Environmental Planning Council states that there are five existing pump-out facilities available to service vessels which use the Navesink River. Sea Land Marina, located at 261 West Front Street, Red Bank, operates a portable pumpout. The pumpout is available from 7:00 a.m. to 5:00 p.m. beginning April 15 until October 15 and is operated by the marina staff. A \$5.00 fee is charged for the use of the pumpout. Irwin's Boat Works, located at 1 Marine Park, Red Bank, operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. beginning May until October 31 and is operated by the marina staff. A fee of \$5.00 is charged for the use of the pumpout. Red Bank Municipal Basin, located at Marine Park, Red Bank, operates a stationery pumpout. The pumpout is available 24 hours a day year round and is self-operated. No fee is charged for use of the pumpout. Fair Haven Yacht Works, located at 75 DeNormandie Avenue, Fair Haven, operates a portable pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. and is operated by the marina staff. A \$5.00 fee is charged for the use of the pumpout. Molly Pitcher Inn and Marina, located at 88 Riverside Avenue, Red Bank, operates a stationary pumpout. The pumpout is available upon request for customers of the marina. One facility, Sea Land Marina, located in Red Bank has a restriction which would exclude boats greater than 26 feet in length. This restriction impacts approximately 18% of the vessel fleet and there are three facilities available for their needs.

Vessel waste generated from the pump-out facilities within the proposed NDA is discharged into municipal sewer lines and is conveyed to the Northeast Monmouth Regional Sewage Authority (NJPDES Permit No. NJ0024520) at 1 Highland Avenue in Monmouth Beach for treatment.

According to the State's petition, the maximum daily vessel population for

the waters of Navesink River is approximately 1,122 vessels. This estimate is based on (1) vessels docked at marinas and yacht clubs (866 vessels), (2) vessels docked at non-marina facilities (227 vessels) and (3) transient vessels (29 vessels). The vessel population based on length is 915 vessels less than 26 feet in length, 193 vessels between 26 feet and 40 feet in length and 14 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that one pumpout is needed for the Navesink River. As previously stated, five pumpout facilities are currently available to service the boating population. Additionally, four marinas have applied for pumpout grants to install a total of five new pumpouts.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Navesink River in the county of Monmouth, New Jersey. A final determination on this matter will be made following the 30-day period for public comment and will result in a New Jersey State prohibition of any sewage discharges from vessels in Navesink River.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before June 11, 1999. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region II, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York 10007-1866. Telephone: (212) 637-3880.

Dated: April 27, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99-12005 Filed 5-11-99; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, May 18, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, May 20, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999-9: Bill Bradley for President, Inc., by Robert F. Bauer, counsel.

Advisory Opinion 1999-11: Mary Kay Scullion, Counsel for Ms. Dianne Byrum.

Proposed Final Rules on Matching Credit Card and Debit Card Contributions in Presidential Campaigns.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 694-1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99-12148 Filed 5-10-99; 2:54 pm]

BILLING CODE 6715-01-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, NW, 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.: 202-010168-013. Title: New Caribbean Service Rate Agreement.

Parties: Thos. & Jas. Harrison, Ltd., Compagnie Generale Maritime, Hapag-Lloyd Container Linie GmbH, P&O Nedlloyd B.V., Columbus Line.

Synopsis: The proposed amendment restates the Agreement and makes revisions consistent with the Ocean Shipping Reform Act of 1998 and applicable European Union directives. The parties request expedited review.

Agreement No.: 202-011259-017.

Title: United States/Southern Africa Conference Agreement.

Parties: A.P. Moller-Maersk Line Lykes Lines Limited, LLC

Mediterranean Shipping Company S.A. Safbank Line, Ltd. Wilhelmsen Lines A/S (associate member)

Synopsis: The proposed notification deletes any reference to loyalty contracts; reduces the notice requirement for independent action; permits members to enter into individual service contracts, to discuss and exchange service contract information and data, and to adopt voluntary service contract guidelines; and makes other administrative changes as well as restating the agreement. The parties request expedited review.

By Order of the Federal Maritime Commission

Dated: May 6, 1999.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 99-11905 Filed 5-11-99; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Bittner Shipping, Inc., 6613 Backlick Road, Springfield, VA 22150, Officers: Claudio A. Bittner, President, (Qualifying Individual), Marta A. Bittner, Secretary/Treasurer.

Waldo's Multi-Service, 3462 Golden Gate Way, Lafayette, CA 94549, Renate H. Omania, Sole Proprietor.

Kallista Shipping Corporation, 4345 NW 97th Avenue, Miami, FL 33178, Officers: Israel Garcia, President, Irene Chizmar, (Qualifying Individual).

Stephenson International Shipping, Inc., 16110 Armistead, Odessa, FL 33556, Officer: Robert Stephenson, President, (Qualifying Individual).

Tatsumi Intermodal (U.S.A.), Inc., 19780 Pacific Gateway Drive, Torrance, CA 90502, Officers: Hideki Yoshimura, President, (Qualifying Individual), Kazuhisa Goko, Exec. Vice President.

All Freight Services International, Inc., 8240 N.W. 52nd Terrace, Suite 518, Miami, FL 33166, Officers: Murray Norkin, President, Elizabeth Garcia, Exec. Vice President, (Qualifying Individual).

Fleetwood Shipping Inc., 5990 North Belt East, Suite 601, Humble, TX 77396, Officer: Dennis Jay Summers, President, (Qualifying Individual).

Pan Star Express (Chicago) Corporation, 228 Howard Street, Des Plaines, IL 60018, Officers: Ivy Wang, Chief Financial Officer, Ken Chen, Secretary.

J.F. Hillebrand USA, Inc., 1600 St. Georges Avenue, Suite 301, Rahway, NJ 07065, Officers: Jean-Jacques Francoulon, President, Dorothee Filbinger-Maier, Vice President, (Qualifying Individual).

Murphy International Corporation d/b/a, Murphy Overseas Corporation, International, Transport & Logistics Corporation, 249 E. Ocean Blvd., Suite 400, Long Beach, CA 90802, Officers: Robert Murphy, President, Drew Reynolds, Vice President, Joseph Velez, (Qualifying Individual).

Four Winds International Group, Inc., 1500 S. W. First Avenue, Suite 850, Portland, OR 97201, Officers: Jerome Rose, President, Kevin M. Griffin, Vice President, (Qualifying Individual).

Mid West Orient (New York) Ltd., 151 Summer Avenue, Kenilworth, NJ 07033, Officer: Mariko Semba, President, (Qualifying Individual).

First Air Express, Inc. d/b/a FAE Transportation, Bison Warehouse and Distributing, 11800 Stonehollow Drive, Suite 200, Austin, TX 78758, Officers: Allen T. Love, President, Lisa D. Counts, Vice President, James C. Savage, (Qualifying Individual).

Dated: May 7, 1999.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 99-11929 Filed 5-11-99; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

[Petition P3-99]

Petition of China Ocean Shipping (Group) Company for a Partial Exemption From the Controlled Carrier Act; Extension of Time

On April 8, 1999, the Commission published notice of the filing of a petition by China Ocean Shipping Company (COSCO) seeking a partial exemption from the controlled carrier provisions of the Shipping Act of 1984, as amended. (64 FR 17181) Replies to the COSCO petition are due on May 7, 1999. Sea-Land Service, Inc. and American President Lines, Ltd., seek a 90-day extension of the comment period. COSCO opposes the requested extension.

Due to the press of other business, there will be some delay before the Commission considers the petition; thus, there appears to be no valid reason to deny a reasonable extension. Accordingly, the date set for replies to

this proceeding is extended to July 6, 1999.

Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573-0001, and be served on counsel for Petitioner, Richard D. Gluck, Esq., Garvey, Schubert & Barer, 1000 Potomac Street, N.W., Washington, D.C. 20007.

Copies of the petition are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 North Capitol Street, N.W., Room 1046.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 99-11992 Filed 5-11-99; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99116]

Cooperative Agreement for Applied Research on New Vaccines; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), National Immunization Program in cooperation with the Office of Prevention Research, announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Applied Research on New Vaccines. This program addresses the "Healthy People 2000" priority area of Immunization and Infectious Diseases. The purpose of the program is to initiate an extramural applied research program focused on new vaccines.

B. Eligible Applicants

Applications may be submitted by public and private non-profit and for profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, managed care organizations, other public and private nonprofit and profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately \$725,000 is available in FY 1999 to fund 2 to 3 awards. It is expected that the average award will range from \$225,000 to \$350,000 to begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Programmatic Interests

Cooperative agreement applications for research projects that address clinical, epidemiologic, or health services delivery questions about new vaccines are being sought. The focus of the cooperative agreement is to eliminate gaps in the available information about new vaccines or their use which is impeding the fullest application of vaccines and their maximum impact on disease. Such gaps may exist for numerous reasons including the small size of populations studied in pre-licensure trials, or the lack of diversity in the populations studied. Applications which propose research studies whose findings have a high probability of being translated into new recommendations for vaccine use by national advisory bodies or whose findings are likely to lead to decreases in vaccine preventable disease morbidity or mortality are encouraged.

Applications must address a programmatic interest area as noted below. Examples of possible projects are also given below; these examples are not to be considered as an exhaustive list but include projects which NIP views as merely exemplifying the priority areas.

1. Clinical or Epidemiologic Research

a. Clinical or epidemiologic topics about new vaccines (including varicella, rotavirus).

For example, there is programmatic interest in assessing the safety and immunogenicity of varicella vaccine among asthmatic children and determining the best immunization regimen. Also, there is interest in learning more about the safety and immunogenicity of rotavirus vaccine among premature infants.

b. Clinical or epidemiologic topics about existing vaccines that have the potential to be recommended for universal use (including hepatitis A). For example, there is programmatic interest in examining the efficacy of a single dose of hepatitis A vaccine in conferring long lasting protection.

c. Clinical or epidemiologic topics about new vaccines expected to be licensed for universal use (including conjugate pneumococcal, live influenza vaccines). For example, there is interest in assessing correlates of protection for pneumococcal vaccine and determining optimal approaches to preventing pneumococcal infection among high risk groups such as those with sickle cell disease.

d. Clinical or epidemiologic topics about the diseases prevented by new vaccines (including disease burden, impact of vaccination, risk factors for disease). For example, there is interest in defining the impact of pneumococcal vaccine on health care utilization and on diagnostic and management practices for children with high fever or common respiratory infections.

2. Health Services Research

Health services delivery topics about the implementation of new vaccine policies and recommendations.

For example, there is interest in what factors influence providers' implementation of new vaccines, including the insurance coverage, parental out-of-pocket costs, and factors influencing decisions by purchasers of health care, insurers of health care, and managed care organizations about coverage for new vaccines.

E. Program Requirements

In conducting activities to achieve this program, the recipient shall be responsible for the activities listed under 1. Recipient Activities, and CDC shall be responsible for conducting activities listed under 2. CDC Activities.

1. Recipient Activities

(a) Design the study: Determine the approaches to take in addressing the questions of interest in the study and develop a study protocol.

(b) Implement the study protocol: Conduct the study according to the protocol and resolve problems in study implementation as they arise.

(c) Analyze data: Plan the analytic approach to be taken to understand and interpret the principal findings from the study.

(d) Prepare manuscripts and publish results: Prepare written manuscript describing the main study findings for publication in a peer reviewed journal.

2. CDC Activities

(a) Provide technical and programmatic information: CDC scientists will provide current scientific and programmatic information relevant to the project.

(b) Assist in executing the study: CDC scientists may collaborate as appropriate in each phase of the study including design, implementation, analysis, and publication. CDC may provide laboratory support, depending on the project funded and the availability of services.

(c) Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

Application Content

Use the information in the Program Priorities, Cooperative Activities, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should identify the announcement number, the intended submission deadline, name the principal investigator, and specify the study area addressed by the proposed project. The letter of intent must be submitted on or before June 15, 1999, to: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99116, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146.

Application

Submit the original and five copies of PHS-398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398) on or before July 15, 1999, to: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99116, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for submission to the review process. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a

commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applications that are responsive may be subjected to a preliminary evaluation (triage) by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority score and programmatic priorities as determined by a secondary review panel, and the availability of funds.

The first review will be a peer review on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e. the objectives and the hypothesis to be tested.
2. The background of the proposal, e.g., the basis for the present proposal, a critical evaluation of existing knowledge, and the specific vaccine preventable disease knowledge gaps which the proposal intends to fill.
3. The significance and originality of the proposed research.
4. The progress of preliminary studies, if any, pertinent to the application.
5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures and plans for data management and statistical analyses.
6. The extent to which the research findings are likely to fill important information gaps about new vaccines and lead to new vaccine preventable disease policies and recommendations by advisory groups or feasible, cost-effective interventions.
7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.
8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).
9. The reasonableness of the proposed budget to the proposed research.

10. Adequacy of existing and proposed facilities and resources.

11. Inclusion of Women and Racial and Ethnic Minorities in Research.

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

A. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

B. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits

12. Human subjects:

The extent to which the application adequately addresses the requirements of Title 45 CFR part 46 for the protection of human subjects.

The second review will be conducted by a secondary review committee of senior Federal officials. The factors to be considered will include:

1. The results of the peer review.
2. Program balance among the two major areas of interest: (a) The clinical and epidemiologic topics surrounding new vaccines and the diseases they prevent, and (b) the health services delivery and program implementation topics.
3. Budgetary considerations.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. progress reports semiannual;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

- AR-1 Human Subjects Requirements
AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR-9 Paperwork Reduction Act

AR-10 Smoke-Free Workplace Requirements

AR-11 Healthy People 2000

AR-12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 and 307 of the Public Health Service Act, 42 U.S.C. section 241 and 242I. The Catalog of Federal Domestic Assistance Number is 93.185.

J. Where To Obtain Additional Information

This and other CDC announcements may be downloaded from the CDC Internet homepage—<http://www.cdc.gov>. Click on "funding."

To receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888-472-6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99116, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone: (770) 488-2716, E-mail: spo2@cdc.gov

For program technical assistance, contact: Roger Bernier, PhD, MPH, Associate Director for Science, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS-E05, Atlanta, Georgia, 30333, Telephone: (404) 639-8204, E-mail: rhb2@cdc.gov

Dated: May 6, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-11928 Filed 5-11-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Bureau; Advisory Committee on Head Start Research and Evaluation; Notice of Meeting

AGENCY: Administration for Children, Youth and Families, ACF, DHHS.

ACTION: Notice of meeting; Advisory Committee on Head Start Research and Evaluation.

SUMMARY: The 1998 Head Start Reauthorization (42 U.S.C. 9844(g); Section 649(g)(1) of the Head Start Act, as amended) called on the Secretary of Health and Human Services to form an independent panel of experts (i.e., an Advisory Committee) to offer advice concerning research designs that would provide a national analysis of the impact of Head Start Programs. The June 2-3, 1999 meeting will be the second of three meetings of the Advisory Committee that will culminate in a report to the Secretary due October 1, 1999.

DATE AND TIME: June 2, 1999, 9:00 a.m.-5:00 p.m. and June 3, 1999, 9:00 a.m.-5:00 p.m.

Place: Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: This meeting is open to the public and is barrier free. Meeting records will also be open to the public and will be kept at the Switzer Building located at 330 "C" Street, SW, Washington, DC 20447. The Head Start Bureau also intends to make material related to this meeting available on the Head Start web site <http://www2.acf.dhhs.gov/programs/hsb>. An interpreter for the deaf and hearing impaired will be available upon advance request by calling Ellsworth Associates at 703/821-3090 (Ext. 282).

FOR FURTHER INFORMATION CONTACT: Deborah Roderick Stark at 301/889-0430 for substantive information. ACF Office of Public Affairs at 202/401-9215 for press inquiries. Ellsworth Associates at 703/821-3090 (ext. 282) for logistical information.

Dated: May 6, 1999.
Patricia Montoya,
Commissioner, Administration on Children, Youth, and Families.
 [FR Doc. 99-12018 Filed 5-11-99; 8:45 am]
BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104-13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443-1891.

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 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.

Proposed Project: National Fetal and Infant Mortality Review (FIMR) Program Evaluation—New

The Johns Hopkins Women's and Children's Health Policy Center, under a cooperative agreement with the Maternal and Child Health Bureau (MCHB) of the Health Resources and Services Administration (HRSA) is conducting a national evaluation of the Fetal and Infant Mortality Review Program. FIMR is community based, aimed at guiding communities to identify and solve problems contributing to poor reproductive outcomes and infant health by using the sentinel event of an infant death to systematically examine a wide array of factors that are related to infant mortality. FIMR findings are used to stimulate policy development and quality improvement efforts. The purpose of this evaluation is to look at the effect of FIMRs and other community-level perinatal systems initiatives on health systems, with an eye toward characterizing the unique contributions of the FIMR model and process.

The main objectives of the FIMR evaluation are: (1) To compare the impact of FIMR on the health and related service systems for women, infants, and families with infants with that of other perinatal systems related initiatives, and (2) to compare the implementation of public health functions related to policies, programs, and practices for women, infants, and families with infants across a number of community systems initiatives. The study will utilize three survey instruments for data collection.

The estimated response burden is as follows:

Survey	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
FIMR	100	1	100	2	200
Local Health Dept	200	1	200	1.5	300
Perinatal Initiatives	100	1	100	1.75	175
Total			400		675

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14-33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 5, 1999.
Jane Harrison,
Director, Division of Policy Review and Coordination.
 [FR Doc. 99-11900 Filed 5-11-99; 8:45 am]
BILLING CODE 4160-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: April 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of April 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject City, State	Effective date
Program-Related Convictions	
Ackerson, Valerie Smith, Sacramento, CA	05/20/1999
Alcantara, Francisco, Miami, FL	05/20/1999
Alos, Elizabeth, Hialeah, FL	05/20/1999
Arroyo, Angelina, N Highlands, CA	05/20/1999
Augustine, Karen A, Houston, TX	05/20/1999
Benavides, Marie P, Bryan, TX	05/20/1999
Berg, Walter A, Bedford, VA	05/20/1999
Blake, Jeannette, Prescott, AR	05/20/1999
Borzouye, Amir, Old Westbury, NY	05/20/1999
Brallier, Samuel, Lake Butler, FL	05/20/1999
Burnette, John Barry, Bullhead City, AZ	05/20/1999
Cabrera, Rogelio, Miami, FL	05/20/1999
Cavazos, Anthony James, Harlingen, TX	05/20/1999
Collier, B David, Wauwatosa, WI	05/20/1999
Devera, Lorenzo V, Tarzana, CA	05/20/1999
Dorojen, Inc, Yardley, PA	05/20/1999
Dura, Narin, Norco, CA	05/20/1999
Garcia, Nestor, Coleman, FL	05/20/1999
Gleen, Paula D, Bennettsville, SC	05/20/1999
Gonzalez, Lilia Dejesus, Miami, FL	05/20/1999
Goodrow, Andrew, Biloxi, MS	05/20/1999
Gray, Floyd, Monroe, LA	05/20/1999
Guardian Angel Home Health, Bryan, TX	05/20/1999
Hayes, Terrence Robert, San Antonio, TX	05/20/1999
Hirakawa, Ricky Kunito, Pearl City, HI	05/20/1999

Subject City, State	Effective date	Subject City, State	Effective date
Hobot, Dennis Preston, Salt Lake City, UT	05/20/1999	Vasisth, Vinod C, Mechanicsburg, PA	05/20/1999
Hoogenboom, Carol, Worth, IL	05/20/1999	Vinter, Gregory, Brooklyn, NY ..	05/20/1999
Ivashenko, Alexander, Homdel, NJ	05/20/1999	Wejrowski, Jeffrey A, Milwaukee, WI	05/20/1999
Jackson, Willie Edward, Little Rock, AR	05/20/1999	Williams, Cynthia, Baton Rouge, LA	05/20/1999
Keel, Robert L, Huntingdon, PA	05/20/1999	Williams, Linda, Bryan, TX	05/20/1999
Kelley, Varval Jean, Fresno, CA	05/20/1999	Williams, Devin, Waupun, WI ...	05/20/1999
Kilburn, Julie Ann, Sheridan, AR	05/20/1999	Wilson, Paul W, Vienna, WV	05/20/1999
Kim, Hack J, Lancaster, PA	05/20/1999	Wilson, Sylvia Merino, Fresno, CA	05/20/1999
Kirkpatrick, Shadavia Jamese, Morganton, NC	05/20/1999	Felony Convictions For Health Care Fraud	
Leblanc, Frantz, Ambler, PA	05/20/1999	Padilla, Paul Bradley, Kalamazoo, MI	5/20/1999
Lewis, Andrew Howard, Los Gatos, CA	05/20/1999	Felony Control Substance Convictions	
Martinez, Rafael, Texarkana, TX	05/20/1999	Aram, Davar, Chino Hills, CA ...	05/20/1999
McCastel, Maryann, Sacramento, CA	05/20/1999	Cochran, Mary K, Caledonia, OH	05/20/1999
McClendon, James Eddie, Montgomery, AL	05/20/1999	M V Medical Equipment, Inc, Miami, FL	02/02/1999
McCoy, Dorothy Mae, Sacramento, CA	05/20/1999	Martin, Mirey A M, Miami, FL ...	02/02/1999
McKinney, Laurence T, Loretto, PA	05/20/1999	Reinoso, Ileana, Miami, FL	12/14/1998
Mitchell, Ginger, Pearl, MS	05/20/1999	Patient Abuse/Neglect Convictions	
Moore, Tamie M, St Maries, ID	05/20/1999	Adedapo, Abosede, Baltimore, MD	05/20/1999
Murray, Opis, Markham, IL	05/20/1999	Amerson, Leta Marie, Flippin, AR	05/20/1999
Nicholson, Michael A, Fort Mill, SC	05/20/1999	Anderson, Amy Rachele, Moses Lake, WA	05/20/1999
Nunez, Pete, Fresno, CA	05/20/1999	Ansiello, Lisa, Oakland, CA	05/20/1999
Patkoff, Ronald Lincoln, Mannford, OK	05/20/1999	Berry, Joe Morrison, Stillwater, OK	05/20/1999
Patrick, Sharon Louise, Fair Oaks, CA	05/20/1999	Bonner, Wendy Annette, Houston, TX	05/20/1999
Perez, Emma V, Lemoore, CA	05/20/1999	Brock, Kenya, Davis Station, SC	05/20/1999
Perez, Hector, Lemoore, CA	05/20/1999	Carpenter, Gene Patrick, Chestertown, MD	05/20/1999
Phillips, Florence, Park Ridge, IL	05/20/1999	Chaney, Barry, Benton, AR	05/20/1999
Piowarczyk, Anthony W, Grayslake, IL	05/20/1999	Clay, Stephen, Jackson, MS	05/20/1999
Polin, Stanton G, Skokie, IL	05/20/1999	David, Bonnielyn Mae, North Rose, NY	05/20/1999
Redmond, Geoffrey P, Cleveland, OH	05/20/1999	Echols, Clayton, Albuquerque, NM	05/20/1999
Reese, Tommy, Haughton, LA	05/20/1999	Fitzgerald, Diane Elaine, Enid, OK	05/20/1999
Riedy, Stephanie, Lebanon, MO	05/20/1999	Ford, Gerrick Paul, Morrow, LA	05/20/1999
Savage, George Jacob Jr, Cape Charles, VA	05/20/1999	Garlock, Clark Steven, Fortuna, CA	05/20/1999
Schiefelbein, Arthur J, Dearborn Hgts, MI	05/20/1999	Goldberg, TINA, Westerly, RI ...	05/20/1999
Shaktah, Thaer, Oak Lawn, IL	05/20/1999	Hicks, Shamodia P, FT Worth, TX	05/20/1999
Shaktah, Hanan, Oak Lawn, IL	05/20/1999	Hodges, James Sr, Holden, LA	05/20/1999
Sharma, Chandra D, White Deer, PA	05/20/1999	Ikard, Sandra, Natchez, MS	05/20/1999
Sharma, Subodh C, White Deer, PA	05/20/1999	Johnson, Earnestine, Monticello, MS	05/20/1999
Sharma, Sushil C, Montgomery, PA	05/20/1999	Johnson, Minnie Ola, Enid, OK	05/20/1999
Smith, Virlee, Dumas, AR	05/20/1999	Joyce, Stephanie J, Choctaw, OK	05/20/1999
Smith, Evelyn Marie Henry, Magnolia, AR	05/20/1999	Lewis, Sebastian, Philadelphia, MS	05/20/1999
Stefonek, Barbara E, Elm Grove, WI	05/20/1999	Lewis, Kristin R, Mineral Ridge, OH	05/20/1999
Taylor, Susan C, Cranston, RI	05/20/1999	Little, Grace Ifeoma Okafor, Universal City, TX	05/20/1999
Tregubov, Alexander, Churchville, PA	05/20/1999	Moore, Pearl Mae, Heflin, LA	05/20/1999
Tum, Wichniya, Long Beach, CA	05/20/1999		

Subject City, State	Effective date	Subject City, State	Effective date	Subject City, State	Effective date
Oybagde, Solomon, Houston, TX	05/20/1999	Bruno, Thomas A., Troy, MI	05/20/1999	Harrison, Rhonda L., Decatur, IL	05/20/1999
Pierce, Deanna, Brady, TX	05/20/1999	Brunskill, Judith Ann, Plymouth, MN	05/20/1999	Hegarty, Dewitt L., Garfield, WA	05/20/1999
Prince, Edward A, Columbia, SC	05/20/1999	Bryington, Gary L., Drums, PA	05/20/1999	Helmueller, Sheila Rebecca, Red Wing, MN	05/20/1999
Pugh, Lois Jean, Honesdale, PA	05/20/1999	Budden, Wendy, Brockton, MA	05/20/1999	Herdingham, David, Berwick, ME	05/20/1999
Salwen, Geraldine Marcia, Loveland, CO	05/20/1999	Burton, Susan F., Palmyra, VA	05/20/1999	Hicks, Willie Howard Jr.,	05/20/1999
Sattiewhite, Barbara J, San Antonio, TX	05/20/1999	Calon, Antonino H., Havre De Grace, MD	05/20/1999	Laurel, DE	05/20/1999
Schmitt, William Ryan, Salt Lake City, UT	05/20/1999	Carter, Lonnie D., Buffalo, NY	05/20/1999	Hoffman, Annette, Chicago, IL	05/20/1999
Shine, Tekisha Denise, Homer, LA	05/20/1999	Cervone, Jeanne, Pittsburgh, PA	05/20/1999	Holden, Janyce, Glastonbury, CT	05/20/1999
Sims, Jesse Lee, Fort Worth, TX	05/20/1999	Chandler, Susan E., Newport News, VA	05/20/1999	Homish, Jerome D, Toledo, OH	05/20/1999
Vasser, Brack Lamont, Marksville, LA	05/20/1999	Christine, Brigitte, Springfield, IL	05/20/1999	Huttinger, Carol Ann, Hanover, PA	05/20/1999
Victorian, Rachel M, Orange, TX	05/20/1999	Clark, Maryellen P., Philadelphia, PA	05/20/1999	Jackson, Sharena Lisette, Hampton, VA	05/20/1999
Walker, Rosella, Starkville, MS	05/20/1999	Clay, Deborah L., Greenwood, MS	05/20/1999	Jagnandan, Norris Rajkumar, Jackson, MS	05/20/1999
Walker, Tonya, Temple Hills, MD	05/20/1999	Cochran, Heather L., Philadelphia, PA	05/20/1999	Jennison, Nicole, Johnson, VT	05/20/1999
Walters, Pam W, Tooele, UT	05/20/1999	Comolli, Mary Ellen, Westerly, RI	05/20/1999	John, Neal G Jr, W Liberty, WV	05/20/1999
Wetzel, James Elmer, Monroeville, PA	05/20/1999	Comparetto, Kimberly, N. Yarmouth, ME	05/20/1999	Johnson, Judy Kelso, Greenback, TN	05/20/1999
Williams, Bernard Keith, Pineville, LA	05/20/1999	Cook, Anita Kay, Minneapolis, MN	05/20/1999	Jones, William K, Williamsburg, VA	05/20/1999
Conviction for Health Care Fraud		Coulter, Sonra, Hampton, VA ...	05/20/1999	Joseph, Lloyd, Berkely, CA	05/20/1999
Andrews, Cannette Mealing, Edgefield, SC	05/20/1999	DeForge, Deborah A., Graniteville, VT	05/20/1999	Keiser, Celeste Marie, Minneapolis, MN	05/20/1999
La Motta, Charles, Scarsdale, NY	05/20/1999	Deleon, Morena, Alexandria, VA	05/20/1999	Kilton, Shannon K, Enfield, NH	05/20/1999
Washington, Carolyn, N Charleston, SC	05/20/1999	Derboven, Paul, Springvale, ME	05/20/1999	Kuhn, Charles, Peoria, IL	05/20/1999
Controlled Substance Convictions		Distelhorst, Ronald Arthur, Schaumburg, IL	05/20/1999	Lachica, Romulo F, Berrien Springs, MI	05/20/1999
Kouns, George, Gardendale, IL	05/20/1999	Donahue, David, Norfolk, VA ...	05/20/1999	Laubhan, Paul R, Chicago, IL ..	05/20/1999
Wells, Gregory Darrell, Ashland, KY	05/20/1999	Draper, Carmonia, Stratford, CT	05/20/1999	Lezotte, James P, Philadelphia, PA	05/20/1999
License Revocation/Suspension/Surrendered		Dunblazier, Craig K., Clinton, TN	05/20/1999	Manke, Janet, Chesapeake, VA	05/20/1999
Afton, Carol, Brookville, PA	05/20/1999	Duncan, Phyllis A. King, Abingdon, VA	05/20/1999	Marshall, Mary Ellen, Whitney, TX	05/20/1999
Allen, Colleen, Branford, CT	05/20/1999	Eastin, Virginia A., Burlington, IA	05/20/1999	McElyea, Barry A, Roanoke, VA	05/20/1999
Allison, Ralph B., Los Osos, CA	05/20/1999	Fisher, Robert, Frankfort, KY ...	05/20/1999	Mendoza, Susan M, Manchester, NH	05/20/1999
Anastasoff, John William, Lake Havasu City, AZ	05/20/1999	Flury, Rachel A., Emigsville, PA	05/20/1999	Milam, Leslie, Columbus, MS ...	05/20/1999
Anderson, Hilary L., New Bern, NC	05/20/1999	Foley, Kelly A., Brattleboro, VT	05/20/1999	Monson, David, Brainerd, MN ..	05/20/1999
Anderson, Debra Jean, Columbia Hgts, MN	05/20/1999	Freundt, Susan Silvonek, Lehighton, PA	05/20/1999	Moody, Christina Y, Chicago, IL	05/20/1999
Archambault, Nichole, Dighton, MA	05/20/1999	Futterman, Steven, Gaithersburg, MD	05/20/1999	Morgan, Madeline M, Chicago, IL	05/20/1999
Ardalan, Dorothea C., Fairfax, VA	05/20/1999	Gallagher, John J., Philadelphia, PA	05/20/1999	Morrison, Nina Macklin, Richmond, VA	05/20/1999
Baiter, Sheri Ann, Chicago, IL ..	05/20/1999	Garrett, Diane Smith, Kossuth, MS	05/20/1999	Namey, John T Jr, Jefferson, OH	05/20/1999
Baron, Alfred Jr., Moosic, PA ...	05/20/1999	Gavlik, Jeffrey P., Harrisville, RI	05/20/1999	Neri, Roland, Colchester, VT ...	05/20/1999
Barsztaitis, Renee B., Ottawa, IL	05/20/1999	Gennuso, Kathleen W., Cecil, PA	05/20/1999	Olson, Richard D, New Prague, MN	05/20/1999
Basile, Jeanne, Cheshire, CT ..	05/20/1999	Goodman, Donald A., Bala Cynwyd, PA	05/20/1999	Oneby, Merna M Cochran, W Los Angeles, CA	05/20/1999
Bazan, Pamela, Marion, IL	05/20/1999	Graham, Vicki D., Cheraw, SC	05/20/1999	Owens, Sharon A, Haysi, VA ...	05/20/1999
Beualieu, Pamela, Woodbridge, VA	05/20/1999	Grant, Miranda L., Windsor, VT	05/20/1999	Page, Mary Elizabeth, Saxtons River, VT	05/20/1999
Bobo, James, Robbins, IL	05/20/1999	Gravat, James E., Alexandria, VA	05/20/1999	Palacioz, Lori Jarvis, Virginia Beach, VA	05/20/1999
Brehm, Denise Ames, Leesburg, VA	05/20/1999	Green, Howard Benson, Chicago, IL	05/20/1999	Paskey, Diane Kay, Fairmont, MN	05/20/1999
Brown, Leeanna J., Pearisburg, VA	05/20/1999	Hagiwara, Edeltraud, Lomita, CA	05/20/1999	Pasquariello, Anthony, Washington, PA	05/20/1999
		Hale, Beth, Barton, VT	05/20/1999	Passias, James N, Westerville, OH	05/20/1999
		Hanson, Nicolette C., Fairview Park, OH	05/20/1999	Peoples, Robert William, Manhattan Bch, CA	05/20/1999
				Ramsey, John C, Houston, TX	05/20/1999
				Rednour, Lois Ann, Marshall, MN	05/20/1999

Subject City, State	Effective date	Subject City, State	Effective date
Remy, Eddy, Providence, RI	05/20/1999	Holmes, James E, Benton, KY	05/20/1999
Repice, Joseph P, Winona, MN	05/20/1999	Kaplan, Joel, Chicago, IL	05/20/1999
Ripley, Lisa R, Claremont, NH	05/20/1999	Navazio, David, Yardley, PA	05/20/1999
Robinson, Kent E, Soulsbyville, CA	05/20/1999	Proulx, Tanya Kaye, Tucson, AZ	12/15/1998
Rodgers, Mark K, Akron, OH	05/20/1999	Southern United Home Med Equip, Poplarville, MS	02/07/1999
Roy, Samir, Albuquerque, NM	05/20/1999	Tomorrow Medical Center, Inc., Miami, FL	02/02/1999
Samila, Kathleen A, Washington, PA	05/20/1999	Vina, Mildrey C, Miami, FL	02/02/1999
Samuel, Sherry A, Brentwood, NH	05/20/1999		
Santi, Ana Maria, Forest hills, NY	05/20/1999	Owned/Controlled by Convicted/Excluded	
Sawyer, David Hamilton, St Cloud, MN	05/20/1999	Bartlett Chiropractic Medical, Redlands, CA	05/20/1999
Scott, Kathleen, Burlington, VT	05/20/1999	Cares, Inc., Miami, FL	05/20/1999
Sidler, Leonard O, High Point, NC	05/20/1999	Davissou Chiropractic, Napa, CA	05/20/1999
Silvey, Louzanie Portis, Culpeper, VA	05/20/1999	E & D Medical Center, Corp., Miami, FL	05/20/1999
Slade, Kelly Jo, Hattiesburg, MS	05/20/1999	Heineken Chiropractic, San Clemente, CA	05/20/1999
Smith, Trina R, Butler, PA	05/20/1999	Jerold R Ford Chiropractic, Modesto, CA	05/20/1999
Sock, Harold P, Framingham, MA	05/20/1999	King Chiropractic, Apache Junction, AZ	05/20/1999
Solomon, Steven J, Virginia Beach, VA	05/20/1999	Kraye Care, Inc., Texarkana, TX	05/20/1999
Spradlin, Jennie B, Morrisville, VT	05/20/1999	Lamb Chiropractic, Sebastopol, CA	05/20/1999
Stephenson, Howard Lynn, Picayune, MS	05/20/1999	Main Street Dental Associates, Farmington, CT	05/20/1999
Stevens, Ruth Illeanna, Shady Grove, PA	05/20/1999	P D Nunez, D D S, Inc., Fresno, CA	05/20/1999
Strobbe, Richard Dean, York, PA	05/20/1999	Sheri Lahaie Chiropractic, Menlo Park, CA	05/20/1999
Terpening, Aloma Elaine Scott, Max Meadows, VA	05/20/1999	Taylorville Chiropractic, Taylorsville, UT	05/20/1999
Thompson, Keith M, Pawtucket, RI	05/20/1999	Ultimate Urban Transport, Milwaukee, WI	05/20/1999
Thornhill, Roy Charles, Memphis, TN	05/20/1999	William T Bunting Chiropractic, Encinitas, CA	05/20/1999
Tobin, Donna Jean, Burnsville, MN	05/20/1999		
Vanzant, Deborah, Clarksdale, MS	05/20/1999	Default on Heal Loan	
Varnado, Brenda J, Natchez, MS	05/20/1999	Beasley, Mary E, Atlanta, GA ..	05/20/1999
Waltman, Loretta H, Natchez, MS	05/20/1999	Dix, David O, Los Angeles, CA	05/20/1999
Ward, David C, Willoughby, OH	05/20/1999	Herrera, Diego F, Long Island City, NY	05/20/1999
West, Elizabeth A, Bethlehem, NH	05/20/1999	Jonas, Shawn G, Kent, WA	05/20/1999
Williams, Patricia, Worcester, MA	05/20/1999	Kaufman, Todd Steven, Mill Valley, CA	05/20/1999
Wolf, Diane K, Hanover, PA	05/20/1999	Lazo, Julie M, Los Angeles, CA	05/20/1999
Woodard, Rae, Pike, NH	05/20/1999	Little, Deidre J, Solana Beach, CA	05/20/1999
Worley, Katherine Lynn, St Louis Park, MN	05/20/1999	Lottie, Mark E, Covina, CA	05/20/1999
Wright, Tonya Billbe, White Plains, VA	05/20/1999	Marin, Rita F, Miami, FL	05/20/1999
Zeigler, Eunice C, Richmond, VA	05/20/1999	Phillips, Joseph P, Gilbertville, KY	05/20/1999
Zelig, Harry, Crescent City, CA	05/20/1999	Smalley, Daniel R, Wellston, MI	04/13/1999
		Sutliff, James F, N Syracuse, NY	03/23/1999
		Vitow, Barry D, Boca Raton, FL	05/20/1999
		Wampler, Ward E II, Birmingham, AL	05/20/1999
		Young, Candace A, Encinitas, CA	05/20/1999
Quality of Care Violations			
Ocampo, Benjamin P, Kissimmee, FL	04/20/1999		
Fraud/Kickbacks			
AGL Lab Corp, Miami, FL	12/14/1998		
Curbelo, Arnaldo, Miami Lakes, FL	12/02/1998		
Gilbert, James P, Pochahontas, AR	02/07/1999		

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR-4480-D-01]

Delegation of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This Notice delegates to the Assistant Secretary for Community Planning and Development the Secretary of Housing and Urban Development's authority to award Rural Housing and Economic Development grants, pursuant to the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, 112 Stat. 2475; October 21, 1998) and succeeding appropriations.

EFFECTIVE DATE: May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Economic Development and Empowerment Service, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW, Washington, DC 29410-0400, Telephone Number (202) 708-2290. Persons with hearing or speech impediments may also utilize HUD's TTY Number at (202) 708-1455 or the Federal Information Relay Service's TTY Number at (800) 877-8339. Aside from the "800" number, the telephone and TTY numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, 112 Stat. 2475; October 21, 1998) authorizes the Secretary of Housing and Urban Development to make grants to various entities to enhance the capacity of rural areas to implement housing and economic development programs and innovative grant programs. These grants are to be awarded by June 1, 1999.

The following three categories of funding are authorized: (1) Capacity building grants; (2) Innovative grants and (3) Seed money grants. Indian tribes, rural non-profits and Community Development Corporations are eligible to apply for all three categories of grants. State housing finance agencies and State community and/or economic development agencies are eligible to apply only for Innovative grants.

As part of the Department of Housing and Urban Development's competitive

Dated: May 3, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99-11908 Filed 5-11-99; 8:45 am]

BILLING CODE 4150-04-P

grants process, a Notice of Funding Availability (NOFA) for the Rural Housing and Economic Development Program was published in the **Federal Register** on March 8, 1999, at 64 FR 11246. Grant awards will be made in accordance with the selection factors set forth in the NOFA.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development the authority to award Rural Housing and Economic Development grants, pursuant to the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, 112 Stat. 2475; October 21, 1998) and succeeding appropriations.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue or be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 5, 1999.

Andrew Cuomo,

Secretary of Housing and Urban Development.

[FR Doc. 99-11972 Filed 5-11-99; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Between June 2, 1998, and March 10, 1999, Region 1 of the Fish and Wildlife Service issued 13 permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Of the 13 permits issued, 4 are associated with implementation of the regional Orange County Central/Coastal Natural Community Conservation Plan/Habitat Conservation Plan (Central/Coastal Plan). On February 2, 1998, we also signed an assumption agreement for a previously issued permit (PRT-810191) that changed the location of incorporation by the permittee. Copies of this assumption agreement, and the 13 permits and associated decision documents are available upon request.

ADDRESSES: If you would like copies of any of the above documents, please contact the Fish and Wildlife Service Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, telephone (800) 582-3421; or the Fish and Wildlife Service, Division of Consultation and Conservation Planning, 911 NE 11th Avenue, 4th Floor East, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Jim Browning, Fish and Wildlife Biologist, at the above Portland, Oregon, address; telephone (503) 231-6241.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the take of wildlife species listed as endangered or threatened, respectively. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

Incidental Take Permits Issued Pursuant to the Central/Coastal Plan

The Central/Coastal Plan fully anticipated that jurisdictions within the plan boundaries would sign the plan's Implementing Agreement as Participating Jurisdictions following approval of the plan and subsequently be issued an Incidental Take Permit. Provided that no plan revisions or additional impacts were determined to be associated with permit issuance, no revision to the Service's permit decision documents for the Central/Coastal Plan would be necessary. The Service determined that no plan revisions or additional impacts were associated with issuance of the following permits pursuant to the Central/Coastal Plan. Copies of these permits and associated decision documents are available upon request. Decision documents for each permit include Findings and Recommendations, a Biological Opinion, and the Record of Decision for the Central/Coastal Plan.

Name of permittee	Permit No.	Issuance date
City of Mission Viejo	TE 005092-0	11/20/98
City of Irvine	TE 005089-0	11/20/98
City of Lake Forest	TE 005791-0	12/21/98
City of Orange	TE 006661-0	01/08/99

Incidental Take Permits Not Associated With the Central/Coastal Plan

Between June 2, 1998, and March 10, 1999, Region 1 of the Service issued the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Act. Each permit was issued after the following determinations were made: the application had been submitted in

good faith; all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of the species; and the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives, pursuant to the National Environmental Policy Act of 1969.

Copies of these permits and associated decision documents are available upon request. Decision documents for each permit include Findings and Recommendations; a Biological Opinion; and either a Finding of No Significant Impact, a Record of Decision, or an Environmental Action Statement.

Name of permittee	Permit No.	Issuance date
Graniterock Co. (Wilder Quarry)	PRT-842273	06/19/98
Maxwell Irrigation District	PRT-842926	07/24/98
Los Osos Center, LLC	PRT-844723	07/31/98
Seneca-Enron	TE 000955-0	08/14/98
Graniterock Co. (Quail Hollow Quarry)	PRT-830417, Amendment 08/31/98#1	8/31/98
Pacific Gas & Electric Co. (Metcalf-Edenvale)	TE 003250-0	11/24/98 Edenvale)
U.S. Borax, Inc., 1,940-Acre Project	TE 837867-0	02/05/99
Zanker Material Processing Facility	TE 006962-0	02/23/99
University of California, Davis	TE 008810-0	03/10/99

Assumption Agreement Associated With the Central/Coastal Plan

In addition to issuing the incidental take permits listed above, we signed an assumption agreement, dated February 2, 1998, for incidental take permit PRT-810191 issued July 7, 1996. This agreement formally recognized the reincorporation of the permittee, The Irvine Company, from a Michigan corporation to a Delaware corporation. In signing the agreement, The Irvine Company-Delaware assumed the obligations of The Irvine Company-Michigan for implementation of the Central/Coastal Plan. Reincorporation did not result in a new analysis of effects or change the requirements of the original permit, habitat conservation plan, or implementing agreement. Copies of the executed assumption agreement are available upon request.

Dated: April 29, 1999.

Elizabeth H. Stevenson,

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Region 1, Sacramento, California.

[FR Doc. 99-11340 Filed 5-11-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-094-03-6332-00: 4310-33]

Rescinding of the Emergency Closure of Public Lands: Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Rescind the 1993 Emergency Closure of public lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are now rescinded from the temporary closure of water activities in Lake Creek. The closure was made under the authority of 43 CFR 8364.1.

The public lands affected by this closure are specifically identified as the Lake Creek Slide, a natural bedrock

feature in the bed of Lake Creek, within public lands located as follows:

Willamette Meridian, Oregon

T. 16 S., R. 7 W., Sec. 19: Metes and Bounds within the SE¹/₄SE¹/₄

Containing approximately 2 acres.

SUPPLEMENTARY INFORMATION: The original closure was published 58 FR 39222, July 22, 1993. The rationale to rescind this temporary closure follows: The "temporary closure" is now 6 years old, BLM realizes it needs to either make this a permanent closure or resend it. During the 6 years of temporary closure, visitors have continued to ignore 2 visibly posted Danger signs and slide down the rock slab, especially when BLM personnel are not around to enforce it. This behavior demonstrates that a permanent closure would be just as ineffective without full time BLM personnel on site to enforce it. BLM does not have the manpower or funding to provide for this presence. Most visitors are aware of the hazards. The Danger signs have been revised with new verbiage to increase visitor's awareness of the many hazards present on site. The revised signs read:

DANGER UNSUPERVISED AREA
HAZARDOUS TO SLIDE ON ROCKS, SWIM IN THIS AREA, OR DIVE INTO THE WATER
BEWARE OF SLIPPERY SURFACES, SUBMERGED ROCKS, AND SHIFTING TOPOGRAPHY
PARTICIPATING IN THESE OR SIMILAR ACTIVITIES CAN RESULT IN SERIOUS INJURY OR DEATH

DATES: This rescind is effective on May 12, 1999.

ADDRESSES: Copies of this action and maps showing the location of this area are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Diane Chung, Coast Range Field Manager, Eugene District Office, at (541) 683-6600 or 1-888-442-3061.

Dated: May 4, 1999.

Dan Howells,

Acting Coast Range Field Manager.

[FR Doc. 99-11776 Filed 5-11-99; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-920-1990-00]

Notice of Availability of the Programmatic Environmental Assessment for Selected Actions Taken for Mining Claim Use and Occupancy in Nevada, and the Preliminary Finding of No Significant Impact

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), and Use and Occupancy Under the Mining Laws regulations (43 CFR 3715), the Bureau of Land Management has prepared an environmental assessment (EA) that evaluates the impacts of typical mining claim and/or millsite occupancies. This EA describes and analyzes the proposed action, consisting of seven typical occupancy scenarios, and the no action option. The actions analyzed in this EA involve operations that disturb 5 acres or less. This notice is intended to invite the public to comment on the analysis of impacts presented in the EA and the performance measures developed for the proposed action.

DATES: Written comments will be accepted on or before June 11, 1999. Any comments received by the close of the comment period will be evaluated and those letters that identify issues, where clarification or discussion is required, will be addressed in the final EA. Copies of the EA and the preliminary Finding of No Significant Impact (FONSI) will be provided to any person or agency commenting, or to other interested parties, upon written

request. Comments on the EA and FONSI should be sent to the Nevada State Office at the address listed below.

ADDRESSES: Send comments on the EA to: Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520-0006

FOR FURTHER INFORMATION CONTACT: Bob Gibson, Geologist, Nevada State Office. Telephone: (775) 861-6564.

Jean Rivers-Council,

Associate State Director.

[FR Doc. 99-11907 Filed 5-11-99; 8:45 am]

BILLING CODE 4310-32-P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-787 (Final); Extruded Rubber Thread From Indonesia

Determination

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury³ by reason of imports from Indonesia of extruded rubber thread,⁴ provided for in heading 4007.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).⁵

Background

The Commission instituted this investigation effective March 31, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by North American Rubber

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioner Askey dissenting.

³ Commissioner Crawford finds two like products corresponding to the scope of this investigation as defined by Commerce. She finds (1) that the industry in the United States producing food-grade extruded rubber thread is not materially injured, or threatened with material injury, by reason of LTFV imports from Indonesia, and (2) that the industry in the United States producing all other extruded rubber thread is materially injured by reason of such imports.

⁴ For purposes of this investigation, Commerce has defined "extruded rubber thread" as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inches or 18 gauge, in diameter.

⁵ The Commission did not determine that it would have found material injury but for the suspension of liquidation of entries of the merchandise under investigation, pursuant to 19 U.S.C. § 1673d(b)(4)(B).

Thread Co., Ltd., Fall River, MA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of extruded rubber thread from Indonesia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 19, 1998 (63 FR 64276). The hearing was held in Washington, DC, on March 25, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 7, 1999. The views of the Commission are contained in USITC Publication 3191 (May 1999), entitled Extruded Rubber Thread from Indonesia: Investigation No. 731-TA-787 (Final).

Issued: May 6, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-11989 Filed 5-11-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Investigation No. AA1921-111 (Review); Roller Chain From Japan

AGENCY: United States International Trade Commission.

ACTION: Cancellation of the hearing scheduled for full five-year review concerning the antidumping finding on roller chain from Japan.

SUMMARY: The Commission hereby gives notice that the hearing scheduled for May 6, 1999 for the five-year review concerning the antidumping finding on roller chain from Japan is cancelled.

EFFECTIVE DATE: May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special

assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On November 25, 1998 (63 FR 65221), the Commission published a notice in the **Federal Register** scheduling a full five-year review concerning the antidumping finding on roller chain from Japan. The schedule provided for a public hearing on May 6, 1999. Requests to appear at the hearing were filed with the Commission on behalf of Daido Kogyo Co., Ltd., Enuma Chain Manufacturing Co., Ltd., Oriental Chain Manufacturing Co., Ltd., Pulton Chain Co., Inc., RK Excel Co., Ltd., Kaga Industries Co., Ltd., Izumi Chain Mfg. Co., Ltd., and Sugiyama Chain Co., Ltd. A request was also filed by counsel for New Holland North America, Inc. However, each of the requests were subsequently withdrawn. Since there are no current requests by interested parties to appear, the Commission determined to cancel the public hearing on roller chain from Japan scheduled for May 6, 1999.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 5, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-11987 Filed 5-11-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-376, 377, and 379 (Final) and Investigations Nos. 731-TA-788-793 (Final); Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines:²

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² In these investigations, Vice Chairman Marcia E. Miller and Commissioners Carol T. Crawford, Jennifer A. Hillman, and Thelma J. Askey find two domestic like products, voting in the affirmative with respect to certain hot-rolled stainless steel

Continued

(1) Pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Belgium, Italy, and South Africa of certain hot-rolled stainless steel plate in coils³ that have been found by the Department of Commerce to be subsidized by the Governments of Belgium, Italy, and South Africa;⁴

(2) Pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports of certain hot-rolled stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan that have been found by Commerce to be sold in the United States at less than fair value (LTFV);⁵

(3) Pursuant to section 705(b) of the Act (19 U.S.C. § 1671d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium of certain cold-rolled stainless steel plate in coils that have been found by Commerce to be subsidized by the Government of Belgium;⁶

(4) Pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium and Canada of certain cold-rolled stainless steel plate in coils that have been found by

plate in coils and voting in the negative or finding imports to be negligible with respect to certain cold-rolled stainless steel plate in coils. Chairman Lynn M. Bragg and Commissioner Stephen Koplan find one domestic like product encompassing both certain hot-rolled stainless steel plate in coils and certain cold-rolled stainless steel plate in coils, and vote in the affirmative.

³ Imports of certain stainless steel plate in coils, both hot-rolled and cold-rolled, are provided for in subheadings 7219.11.00, 7219.12.00, 7219.31.00, 7219.90.00, 7220.11.00, 7220.20.10, 7220.20.60, and 7220.90.00 of the Harmonized Tariff Schedule of the United States. For purposes of these investigations, the Commission defines certain hot-rolled stainless plate in coils as all domestic product corresponding to the scope of the investigations except for certain cold-rolled stainless steel plate in coils. The Commission defines certain cold-rolled stainless steel plate in coils as all domestic product corresponding to the scope of the investigations that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after cold reduction.

⁴ Chairman Bragg and Commissioner Koplan made affirmative determinations on a single domestic like product encompassing both certain hot-rolled stainless steel plate in coils and certain cold-rolled stainless steel plate in coils.

⁵ Ibid.

⁶ Ibid.

Commerce to be sold in the United States at LTFV;⁷ and

(5) Pursuant to section 771(24)(A) of the Act (19 U.S.C. § 1677(24)(A)), that imports of certain cold-rolled stainless steel plate in coils from Italy, Korea, South Africa, and Taiwan that have been found by Commerce to be subsidized and/or sold in the United States at LTFV are negligible.^{8,9}

Background

The Commission instituted these investigations effective March 31, 1998, following receipt of a petition filed with the Commission and the Department of Commerce on behalf of Armco, Inc., Pittsburgh, PA; J&L Specialty Steel, Inc., Pittsburgh, PA; Lukens Inc., Coatesville, PA; North American Stainless, Ghent, KY; and the United Steelworkers of America, AFL-CIO/CLC. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan were being subsidized and/or sold in the United States at LTFV within the meaning of sections 703(b) and 733(b) of the Act (19 U.S.C. 1671b(b) and 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 9, 1998 (63 FR 67918). The hearing was held in Washington, DC, on March 23, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 3, 1999. The views of the Commission are contained in USITC Publication 3188 (May 1999), entitled Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan: Investigations Nos. 701-TA-376, 377, and 379 (Final) and Investigations Nos. 731-TA-788-793 (Final).

Issued: May 5, 1999.

⁷ Ibid.

⁸ Ibid.

⁹ Investigations regarding such imports are therefore terminated.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-11988 Filed 5-11-99; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Freedom of Information Privacy Act Request.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** February 25, 1999 at 63 FR 9350, allowing for a 60-day public comment period. No comments were received by the INS and this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, ad clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G-639. FOIA/PA Section, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 5, 1999.

Steve Tarragon,

Acting Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99-11903 Filed 5-11-99; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Island Creek Coal Company

[Docket No. M-1999-022-C]

Island Creek Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Ohio No. 11 Mine (I.D. No. 15-03178) located in Union County, Kentucky. The petitioner states that due to a massive roof fall along the 2nd South Panel return in the #5 entry, including but limited to crosscut 15, the affected area cannot be traveled safely in its entirety to conduct weekly examinations. The petitioner proposes to: (i) Establish evaluation points on the side of the roof fall at crosscut 15; (ii) have a qualified person test for methane and the quantity of air at each evaluation point on a weekly basis; and (iii) have the person conducting the test record the results, date, time, and his/her initials in a record book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Consolidation Coal Company

[Docket No. M-1999-023-C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petitioner states that due to a massive roof fall in the West side return from the B shaft to the Second Main West return air course, the area cannot be traveled safely in its entirety to conduct weekly examinations. The petitioner proposes

to: (i) Establish evaluation points A and B to take air and gas measurements; (ii) to maintain the evaluation points and all approaches to the evaluation points in good condition at all times; (iii) have a certified person test for methane and the quantity of air on a weekly basis and record the results, date, time, and his/her initials in a book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Goodin Creek Contracting, Inc.

[Docket No. M-1999-024-C]

Goodin Creek Contracting, Inc., Rt 1 Box 419-A1, Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Goodin Creek Mine (I.D. No. 15-17980) located in Knox County, Kentucky. The petitioner states that due to unsafe roof conditions in certain areas of the return air course, traveling the area to conduct examinations would be unsafe. The petitioner proposes to establish monitoring locations in each entry at crosscut 2 in the return to monitor air leaving the affected area of the air course and in each entry at crosscut 16 in the return to monitor air entering the affected area of the air course. The petitioner also proposes to: (i) Have a certified person conduct weekly evaluations at each of the monitoring locations to measure the quality and quantity of air entering and leaving the locations to determine methane and oxygen concentrations; (ii) have the examiner record the results of the examinations in a book kept on the surface with the date, time, and his/her initials and made available to all interested parties; (iii) maintain all monitoring locations and approaches to the monitoring locations in a safe condition at all times; (iv) post a sign in the main travelway showing the safe travel route to each monitoring location; (v) maintain methane gas or other harmful, noxious, or poisonous gases at legal limits for return air; (vi) instruct all personnel not to travel in the affected area prior to implementing the proposed alternate method; and (vii) only permit entry to the affected area for investigating significant problems with the air flow being detected through the monitoring process. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Eighty-Four Mining Company

[Docket No. M-1999-025-C]

Eighty-Four Mining Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine 84 (I.D. No. 36-00958) located in Washington County, Pennsylvania. The petitioner proposes to increase the maximum lengths of the trailing cables to 900 feet for the mining machine, loading machine, shuttle car, roof bolter, and section ventilation fan. The petitioner has listed specific terms and conditions in this petition for use and maintenance of these trailing cables. The petitioner states that the trailing cables would not be smaller than #4 A.W.G. for the section ventilation fan, roof bolting machine, and shuttle cars, smaller than #2 A.W.G for the loading machine, or smaller than #2/0 A.W.G for the continuous mining machine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. West Ridge Resources, Inc.

[Docket No. M-1999-026-C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its West Ridge Mine (I.D. No. 42-02233) located in Carbon County, Utah. The petitioner requests a modification of the mandatory standard to allow the use of two-entry longwall development and to use the belt entry as a return air course during longwall development, and as an intake during longwall extraction to ensure an adequate quantity of ventilation to dilute and render harmless methane or other noxious gases that may accumulate. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Eastern Associated Coal Corporation

[Docket No. M-1999-027-C]

Eastern Associated Coal Corporation, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.360(a)(1) (preshift examination) to its Matewan Tunnel (I.D. No. 46-08610) located in Boone County, West Virginia. The petitioner proposes to use an alternative

method for preshift examinations. The petitioner proposes to: (i) have a certified person examine the tunnel three hours prior to the beginning of the work week (Sunday night) and on an eight-hour interval during the work week at 8:00 a.m., 4:00 p.m., and 12:00 a.m.; (ii) have a three-man crew leave and enter the tunnel after the initial examination each week, as needed, on their shift which is 12:00 a.m., 8:00 a.m., and 4:00 p.m.; (iii) have the supervisor conduct an on-shift examination in the tunnel during his/her travels and note any problems for prompt correction; and (iv) withdraw the three-man crew from the tunnel and fireboss the tunnel in its entirety before power is restored underground prior to the crew returning underground if the fire bossing schedule is interrupted. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Peabody Coal Company

[Docket No. M-1999-028-C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42419 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Camp No. 11 Mine (I.D. No. 15-08357) located in Union County, Kentucky. The petitioner proposes to establish evaluation points to monitor its bleeder system due to hazardous conditions that hinder continued travel to conduct examinations. The petitioner proposes to (i) conduct daily examinations at various evaluation points; (ii) have a certified person check for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine; and (iii) continuously monitor methane concentrations at Bleeder Fan #2, and Bleeder Fan #3 using a Conspec Mine Monitoring System that would be manned around the clock and set to activate an alarm if methane levels are greater than 2.0 percent. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Eastern Associated Coal Corporation

[Docket No. M-1999-029-C]

Eastern Associated Coal Corporation, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1106-2(c) (transportation of liquefied and nonliquefied compressed gas cylinders; requirements) to its Harris No. 1 Mine (I.D. No. 46-01271) located in Boone

County, West Virginia. The petitioner proposes an alternative method for storage and transportation of compressed gas cylinders. The petitioner proposes to: (i) House the compressed cylinders in a specially designed compartment that is part of a specialized tool car used by the track crew; (ii) have each cylinder encased in a metal housing lined with insulating material equivalent to a Schedule 80 pipe and encapsulated within a metal box made of 1/4-inch metal; (iii) design storage bays to lay 15 degrees downward from the opening to prevent the cylinders from falling out of the bays and install a strap across the openings to prevent the cylinders from being dislodged; and (iv) install fire extinguishers in the tool car. The petitioner states that the cylinder bay would be isolated from the man compartment by the material storage compartment and tool box for the outby end, and workers would be provided with necessary tools, supplies, and a vehicle readily at the worksite for transporting injured miners. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Ziegler Chemical and Mineral Corporation

[Docket No. M-1999-003-M]

Ziegler Chemical and Mineral Corporation, 121 West Main Street, Vernal, Utah 84078 has filed a petition to modify the application of 30 CFR 57.19003 (driving mechanism connections) to its Bonanza Mines #3, #8, #11, and #12; Cowboy Mines #1, and #2; Independent Mines #3, #5, #6, and #7; Neal Mine #1; and Tom Taylor Mine #3 (I.D. No. 42-00876) all located in Uintah County, Utah. The petitioner requests that condition 7 of its previously granted petition, docket number M-81-72-M, be amended to allow a 75 horsepower electric motor with a speed of 885 RPM on the hoist instead of 50 horsepower and a motor speed of 1130 RPM. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety

and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 11, 1999. Copies of these petitions are available for inspection at that address.

Dated: May 4, 1999

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99-12028 Filed 5-11-99; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99-066]

NASA Advisory Committees; Renewal of NASA's Advisory Committee Charters

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Renewal of the Charters of NASA's Advisory Committees.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Pub. L. 92-463, and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of NASA's nine advisory committees is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of these committees are unchanged. However, the Aeronautics and Space Transportation Technology Advisory Committee has been renamed to be the Aero-Space Technology Advisory Committee and some administrative language has been changed in each of the charters. The charter filing date is April 29, 1999 for each of the nine charters.

NASA's nine advisory committees are:

- NASA Aerospace Safety Advisory Panel
- NASA Advisory Council (NAC)
- NAC Technology and Commercialization Advisory Committee
- NAC Minority Business Resource Advisory Committee
- NAC Advisory Committee on the International Space Station
- NAC Aero-Space Technology Advisory Committee
- NAC Space Science Advisory Committee
- NAC Life and Microgravity Sciences and Applications Advisory Committee

NAC Earth System Science and Applications Advisory Committee

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Assistant Advisory Committee Management Officer, Mail Code Z, National Aeronautics and Space Administration, Washington, DC 20546 (202) 358-0732.

SUPPLEMENTARY INFORMATION: NASA Advisory Council and its committees information is available on the world wide web at: <http://www.hq.nasa.gov/office/codeq/codeq-1.htm> and <http://www.hq.nasa.gov/office/codez/nac.htm>.

Dated: May 4, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99-11895 Filed 5-11-99; 8:45 am]

BILLING CODE 7510-01-P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting

Twenty-First Annual Meeting of the Board of Directors

TIME & DATE: 2:00 p.m., Wednesday, May 24, 1999.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 220-2372.

AGENDA:

- I. Call to Order
- II. Approval of Minutes: March 3, 1999, Regular Meeting
- III. Resolution of Appreciation
- IV. Election of Chairman
- V. Election of Vice Chairman
- VI. Committee Appointments:
 - a. Audit Committee
 - b. Budget Committee
 - c. Personnel Committee
 - d. Homeownership Oversight Special Committee
- VII. Election of Officers
- VIII. Board Appointments:
 - a. Internal Audit Director
 - b. Assistant Secretary/Paralegal
- IX. Audit Committee Report: May 11, 1999
- X. Treasurer's Report
- XI. Executive Director's Quarterly Management Report
- XII. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 99-12166 Filed 5-10-99; 3:42 pm]

BILLING CODE 7570-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499]

STP Nuclear Operating Company (South Texas Project Electric Generating Station, Units 1 and 2); Exemption

I

STP Nuclear Operating Company is the holder of Facility Operating License No. NPF-76 and Facility Operating License No. NPF-80, which authorizes operation of the South Texas Project (STP), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized-water reactors at the licensee's site located in Matagorda County, Texas.

II

Section 50.60(a) to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 requires, in part, that except as provided in Section 50.60(b), all light-water nuclear power reactors, other than reactor facilities for which the certifications required under Section 50.82(a)(1) have been submitted, must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendix G of 10 CFR Part 50. Section 50.60(b) of 10 CFR Part 50 states that proposed alternatives to the described requirements of Appendix G of Part 50 or portions thereof may be used when an exemption is granted by the Commission under 10 CFR 50.12.

III

By letter dated March 18, 1999, STP Nuclear Operating Company requested that the NRC exempt STP, Units 1 and 2, from the application of specific requirements of 10 CFR 50.60 and Appendix G to 10 CFR 50. Specifically, STP Nuclear Operating Company proposes to use American Society of Mechanical Engineers (ASME) Code Case N-514 to permit setting the pressure setpoint of STP's cold overpressure mitigation system (COMS) such that the pressure-temperature (P-T) limits required by Appendix G of 10 CFR Part 50 could be exceeded by 10 percent during a low temperature pressure transient.

The Commission has established requirements in 10 CFR Part 50 to protect the integrity of the reactor coolant system pressure boundary. As a part of these, Appendix G of 10 CFR

Part 50 requires that P-T limits be established for reactor pressure vessels during normal operation and vessel hydrostatic testing. As stated in Appendix G, "The appropriate requirements on . . . the pressure-temperature limits . . . must be met for all conditions." In order to avoid approaching these P-T limit curves and provide pressure relief during low temperature overpressurization (LTOP) events, pressurized water reactor licensees have installed protection systems (COMS/LTOP) as part of the reactor coolant system (RCS) pressure boundary. STP Nuclear Operating Company is required, as part of the STP Technical Specifications, to develop, update, and submit reactor vessel P-T limits and COMS setpoints for NRC review and approval.

STP Nuclear Operating Company determined that the exemption request from the provisions of 10 CFR 50.60 and Appendix G was necessary since these regulations require, as previously noted, that reactor vessel conditions not exceed the P-T limits established by Appendix G. In referring to 10 CFR 50.12 on specific exemptions, STP Nuclear Operating Company cited special circumstances regarding achievement of the underlying purpose of the regulation as its basis for requesting this exemption [10 CFR 50.12(a)(2)(ii)].

STP Nuclear Operating Company noted in support of the 10 CFR 50.12(a)(2)(ii) criteria that the underlying purpose of the subject regulation is to establish limits to protect the reactor vessel from brittle failure during low temperature operation and that the COMS provides a physical means of assuring that operation remains within these limits. STP Nuclear Operating Company proposed that establishing the COMS pressure setpoint in accordance with the N-514 provisions, such that the vessel pressure would not exceed 110 percent of the P-T limit allowables, would still provide an acceptable level of safety and mitigate the potential for an inadvertent actuation of the COMS. The use of N-514 was based on the conservatism that have been explicitly incorporated into the procedure for developing the P-T limit curves. This procedure, referenced from Appendix G to Section XI of the ASME Code, includes the following conservatisms: (1) a safety factor of 2 on the pressure stresses; (2) a margin factor applied to RT_{NDT} using Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials"; (3) an assumed $\frac{1}{4}$ thickness flaw with a 6:1 aspect ratio; and (4) a limiting material toughness based on dynamic and crack arrest data.

In addition, STP Nuclear Operating Company stated that a COMS pressure setpoint must be sufficiently high to prevent the inadvertent actuation of the COMS as a result of normal operating pressure surges. STP Nuclear Operating Company requests use of Code Case N-514 to incorporate pressure instrumentation uncertainty in P-T limit calculations, while providing an operating band that permits system makeup and pressure control. Such an inadvertent actuation could lead to the unnecessary release of reactor coolant inside containment and could introduce undesirable thermal transients in the RCS.

The Commission has determined that the application of 10 CFR 50.60 in these particular circumstances is not necessary to achieve the underlying purpose of that rule and that the use of Code Case N-514 would meet the underlying intent of the regulation. Based upon a consideration of the conservatisms, which are explicitly defined in the Appendix G methodology, it was concluded that permitting the COMS setpoint to be established such that the vessel pressure would not exceed 110 percent of the limit defined by the P-T limit curves would provide an adequate margin of safety against brittle failure of the reactor vessel. This is also consistent with the determination that has been reached for other licensees under similar conditions based on the same conditions. Therefore, the exemption requested under the special circumstances of 10 CFR 50.12(a)(2)(ii) was found to be acceptable. The staff also agrees that limiting the potential for inadvertent COMS actuation may improve plant safety.

IV

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants STP Nuclear Operating Company an exemption from the requirements of 10 CFR 50.60 in order to apply ASME Code Case N-514 for determining STP's cold overpressurization mitigation system pressure setpoint.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (64 FR 23689).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99-11997 Filed 5-11-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-445 and 50-446]

Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Units 1 and 2); Exemption

I.

Texas Utilities Electric Company (the licensee/TU Electric) is the holder of Facility Operating Licenses No. NPF-87 and No. NPF-89, which authorize operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized-water reactors at the licensee's site located in Somervell County, Texas.

TU Electric seeks this exemption to the 2 percent above licensed power level assumption to allow for uncertainties specified by Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix K, "ECCS [Emergency Core Cooling System] Evaluation Models," Section I.A., to support license amendments for modest increases of up to 1 percent in the licensed power levels for both units. This will result in an exemption from the requirements of 10 CFR Part 50, Appendix K to allow ECCS evaluation model assumptions to be conducted at no less than 1.01 times licensed power level. The licensee seeks this exemption based on its proposed use of a new feedwater flow measurement system to allow more accurate measurement of thermal power (known as the Leading Edge Flowmeter (LEFM) System), manufactured by Caldon, Inc. The LEFM is described in Caldon, Inc., Topical Report ER-80P, "Improving Thermal Power Accuracy and Plant Safety While Increasing Operating Power Level Using the LEFM System." The subject topical report was approved subject to the limitations stated in a letter and Safety Evaluation (SE) dated March 8, 1999.

II.

Part 50, Appendix K, Section I. A. states, in part, that "it shall be assumed that the reactor has been operating continuously at a power level at least 1.02 times the licensed power level (to allow for such uncertainties as instrument error)." The Appendix K rule was written to ensure that adequate margin for ECCS performance would be available if a design-basis loss-of-coolant accident (LOCA) ever occurred (39 FR 1002, January 4, 1974). The margin was provided by incorporating several conservative features into the ECCS performance criteria as well as maintaining conservative requirements and recommendations for evaluation models.

The basis for the requirement is discussed in background documentation, such as the Statement of Consideration for Appendix K (39 FR 1002, January 4, 1974). The 102 percent assumption is one of several items listed as conservative factors used to model the energy available from reactor operation. The Statement of Consideration also associates the preaccident power level assumption with the modeling of the rate of heat generation after the LOCA occurs. A comparison is made between the estimated uncertainty associated with the decay heat assumption (i.e., 20 percent above the American Nuclear Society (ANS) standard) and the estimated effect on heat generation resulting from the 102 percent power assumption. This is a natural connection since the preaccident power level directly affects the decay heat generation rate after reactor shutdown.

When it was considering changes to Appendix K to accept the use of best-estimate evaluations, the staff understood that the rule incorporated substantial conservatism (see SECY 83-472, "Emergency Core Cooling System Analysis Methods," November 17, 1983). These conservatisms were necessary when the rule was written because of limited experimental evidence. The major analysis inputs and assumptions that contribute to the conservatism in Appendix K are grouped together under Sections A through D of the rule: (A) Sources of Heat During the LOCA (the 102 percent power provision is one factor); (B) Swelling and Rupture of the Cladding and Fuel Rod Thermal Parameters; (C) Blowdown Phenomena; and (D) Post-blowdown Phenomena: Heat Removal by ECCS. In each of these areas, several assumptions are typically used to assure conservatism in the analysis results. For instance, under sources of heat during

the LOCA, in addition to the 102 percent requirement, decay heat is modeled on the basis of an ANS standard with an added 20 percent penalty, and the power distribution shape and peaking factors expected during the operating cycle are chosen to yield the most conservative results. As discussed in SECY-83-472, experimental programs provided ample data, which shed light on the considerable margin provided by Appendix K, giving the staff confidence to consider alternative ECCS evaluation models.

III

Section 50.12(a), states that . . . The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—

(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

(2) The Commission will not consider granting an exemption unless special circumstances are present. . . .

Section 50.12(a)(2), states that special circumstances are present whenever . . .

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

(iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

(vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. . . .

IV

The staff has reviewed the applicable regulations and the regulatory history for Appendix K as well as for Section 50.46, and finds that those regulatory documents do not prohibit the licensee's proposal to use Caldon Inc.'s, Leading Edge Flowmeter System (Caldon LEFM System) instrument. Accordingly, the exemption is authorized by law, as required by 10 CFR 50.12(a)(1).

The staff used Regulatory Guide 1.174 and Standard Review Plan Chapter 19 to review the application for the exemption. Specifically, the staff reviewed the application considering the defense-in-depth philosophy, the maintenance of sufficient safety margin, and the fact that the increase in risk was small and consistent with the Commission safety goals. A slightly higher power level will result in a small increase in decay heat load that could

affect required response time of the ECCS and the available operator response time following transients and accidents. Results of core and containment consequence analyses from higher power levels could also be affected. However, NUREG-1230, "Compendium of ECCS Research for Realistic LOCA Analysis," considered the risk impact of changes associated with the revised ECCS rules, including power increase, and considered a power increase of 5 percent or less to have little risk significance. The staff concludes that this increase of 1 percent is bounded by the NUREG-1230 considerations.

In the safety evaluation for the Caldon topical report ER-80P dated March 8, 1999, the staff accepted statistical treatment of uncertainties attributed to the LEFM and venturi-based flow measurement instruments and the uncertainty values associated with these two types of flow measurement instruments at CPSES. The use of the Caldon LEFM System and quantification of power measurement uncertainty do not raise inconsistencies with the Commission's safety goals. Further, the Commission has determined that, pursuant to 10 CFR 50.12, the requested exemption is authorized by law, will not result in an undue risk to the public health and safety, and is consistent with the common defense and security and is otherwise in the public interest.

The Commission also finds that special circumstances exist. By seeking to apply a smaller margin for power measurement uncertainty, the exemption does not violate the underlying purpose of Appendix K. The application of 1.02 times the licensed thermal power is not necessary to achieve the underlying purpose of Appendix K. Indeed, by quantifying a contributor to the uncertainty where the uncertainty was not specifically known, the exemption may better serve the underlying purpose of the requirement. The use of the Caldon LEFM System and the quantification of power measurement uncertainty appear to offer safety benefits.

By requesting this exemption, the licensee has undertaken to quantify a contributor to the uncertainty in power measurement. Although there is a small safety impact expected from the associated power increase, it is not considered significant. The use of the LEFM system and the quantification of power measurement uncertainty appear to offer safety benefits.

The Caldon LEFM System and the quantification of power measurement uncertainty associated with use of the Caldon LEFM System constitute

material circumstances that did not exist when the rule was written. The current Appendix K rule presumes that the 2 percent margin accounts for uncertainties associated with measurement of thermal power. Contributors to the uncertainty were not identified at the time the rule was written and the magnitude of the uncertainty was not demonstrated by experiment or analysis. The rule does not require quantification of actual uncertainties, nor does the regulatory history reflect any detailed technical basis for the choice of a 2 percent margin. Therefore, the Commission has determined that special circumstances as defined in 10 CFR 50.12(a)(2)(ii), (iv), and (vi) are present.

The Commission hereby grants the licensee an exemption from the requirements of 10 CFR Part 50, Appendix K to allow ECCS evaluation model assumptions to be conducted at no less than 1.01 times licensed power level when the quantification of power measurement uncertainty can be justified by the use of the Caldon LEFM System instrumentation. The granting of this exemption does not, however, provide authority to increase the licensed power of CPSES, Units 1 and 2. A separate license amendment to increase licensed power level, for each licensed unit, will be required to be submitted and approved before such authority may be provided for that unit.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99-11996 Filed 5-11-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-445 and 50-446]

Texas Utilities Electric Company, et al. Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-87 and NPF-89 issued to Texas Utilities Electric Company, et al. (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively. The CPSES facility is located at the licensee's site in Somervell County, Texas.

The proposed amendments would revise the Technical Specifications for fuel storage to increase the spent fuel storage capacity, to add fuel pool boron concentration, and to revise the storage configurations in the spent fuel pool.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequence of an accident previously evaluated?

This proposed license amendment includes changes which are (1) editorial and (2) provide the criteria for acceptable fuel storage in high density racks. The editorial changes are purely administrative changes and have no impact on the probability or consequences of an accident. The revised criteria for acceptable fuel storage in the high density racks are discussed below.

The high density racks differ from the low density racks in that the center to center

storage cell spacing is decreased from a nominal 16 inches to a nominal 9 inches and the high density racks are free standing whereas the low density racks are bolted to the pool. Administrative controls are used to maintain the specified storage patterns and to assure storage of a fuel assembly in a proper location based on initial U-235 enrichment, burnup, and decay time. The increased storage capacity results in added weight in the pools and additional heat loads.

There is no significant increase in the probability of an accident concerning the potential insertion of a fuel assembly in an incorrect location in the high density racks. TU [Texas Utilities] Electric has used administrative controls to move fuel assemblies from location to location since the initial receipt of fuel on site. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification spent fuel rack storage configuration limitations.

There is no increase in the probability of the loss of normal cooling to the fuel storage pool water due to the presence of soluble boron in the pool water for subcriticality control because a concentration of soluble boron similar to that proposed has always been maintained in the fuel storage pool water. The amount of soluble boron required to offset the reactivity increase associated with water temperature outside the normal range was established for the proposed storage configurations.

The consequences of all of these changes have been assessed and the current acceptance criteria in the licensing basis of CPSES will continue to be met. The nuclear criticality, thermal-hydraulic, mechanical, material and structural designs will accommodate these changes. Potentially affected analyses, including a dropped spent fuel assembly, a loss of spent fuel pool cooling, a seismic event, and a fuel assembly placed in a location other than a prescribed location, continue to satisfy the CPSES licensing basis acceptance criteria. The analysis methods used by TU Electric are consistent with methods used by TU Electric in the past or methods used elsewhere in the industry and accepted by the NRC.

Based on the acceptability of the methodology used and compliance with the current CPSES licensing basis, TU Electric concludes that the full use of the high density racks and the increase in storage capacity do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The editorial changes to the Technical Specifications have no impact on plant hardware or operations and therefore cannot create a new or different kind of an accident.

The potential for criticality in the fuel storage pool is not a new or different type of accident. The potential criticality accidents have been reanalyzed in the criticality analysis (Enclosure 1 [to the application]) to demonstrate that the pool remains subcritical.

Soluble boron has been maintained in the fuel storage pool water since its initial operation. The possibility of a fuel storage pool dilution is not affected by the proposed change to the Technical specifications. Therefore, the implementation of Technical Specification controls for the soluble boron will not create the possibility of a new or different kind of accidental pool dilution.

With credit for soluble boron now a major factor in controlling subcriticality, an evaluation of fuel storage pool dilution events was completed. The results of the evaluation concluded that an event which would result in a reduction of the criticality margin below the 5% margin recommended by the NRC is not credible. In addition, the no soluble boron 95/95 criticality analysis assures that a boron concentration of 0 ppm will not result in criticality.

The proposed changes which ensure the maintenance of the fuel storage pool boron concentration and storage configuration, do not represent new concepts. The actual boron concentration in the fuel storage pool is currently maintained at 2400 ppm for SFP [spent fuel pool]1 and SFP2 for refueling purposes. The criticality analysis (Enclosure 2 [to the application]) determined that a boron concentration of 750 ppm (non-accident) and 1800 ppm (accident) results in a k_{eff} [less than or equal to] 0.95.

There is no significant change in plant configuration, equipment design, or usage of plant equipment. The safety analysis for boron dilution has been performed; however, the criticality analyses assure that the pool will remain subcritical with no credit for soluble boron. Therefore, the proposed changes will not create the possibility of a new or different kind of accident.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed editorial changes to the Technical Specifications have no impact on any acceptance criteria, plant operations or the actual failure of any systems, components or structure; therefore these administrative changes have no impact on the margin of safety.

The NRC guidance [Reference 4 [in the application]] has established that an evaluation of margin of safety should address the following areas: (1) Nuclear criticality considerations, (2) Thermal-Hydraulic considerations, (3) Mechanical, material and structural consideration.

Proposed Technical Specifications 3.7.16, 3.7.17, and 4.3.1.1 and the associated fuel storage pool boron concentration and storage requirements will provide adequate margin to assure that the fuel storage array will always remain subcritical by the 5% margin recommended by the NRC. Those limits are based on the criticality analysis (Enclosure 2 [to the application]) performed in accordance with the storage rack criticality analysis methodology described in Reference 8 [in the application].

While the criticality analysis utilized credit for soluble boron, the storage configurations have been defined using k_{eff} calculations to ensure that the spent fuel rack k_{eff} will be less than 1.0 with no soluble boron.

Soluble boron credit is used to offset off-normal conditions (such as a misplaced

assembly) and to provide subcritical margin such that the fuel storage pool k_{eff} is maintained less than or equal to 0.95.

The loss of substantial amount of soluble boron from the spent fuel pools which could lead to exceeding a k_{eff} of 0.95 has been evaluated and shown not to be credible. These evaluations show that the dilution of the spent fuel [pool's] boron concentration from 1800 ppm to 750 ppm is not credible and that the spent fuel rack k_{eff} will remain less than 1.0 when flooded with unborated water.

The thermal-hydraulic evaluation demonstrates that the temperature margin of safety will be maintained. Evaluation of the spent fuel pool cooling system for the increased heat loads shows that the spent fuel cooling system will maintain the abnormal maximum temperature of the spent fuel pool water within the limits of the existing licensing basis (i.e., below 212° F). Additionally, it shows that the normal maximum temperature will be within the existing design basis temperatures for the high density racks, liner, structure, and cooling system and will not have any significant impact on the spent fuel pool demineralizers. Thus, the existing licensing basis remains valid, and there is no significant reduction in the margin of safety for the thermal-hydraulic design or spent fuel cooling.

The main safety function of the spent fuel pool and the high density racks is to maintain the spent fuel assemblies in a safe configuration through normal and abnormal operating conditions. The design basis floor responses of the Fuel Building were confirmed to be adequate and conservative and the floor loading will not exceed the capacity of the Fuel Building. The structural considerations of the high density racks maintain margin of safety against tilting and deflection or movement, such that the high density racks do not impact each other or the pool walls, damage spent fuel assemblies, or cause criticality concerns. Thus, the margin of safety with respect to mechanical, material or structural considerations is not significantly reduced by the full use of the high density racks.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would

result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 11, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available 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 University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the

Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene 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 the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for license amendments falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendments dated February 11, 1999, 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 University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas.

Dated at Rockville, Maryland, this 4th day of May 1999.

For the Nuclear Regulatory Commission.
David H. Jaffe,
*Senior Project Manager, Section 1, Project
 Directorate IV & Decommissioning, Division
 of Licensing Project Management, Office of
 Nuclear Reactor Regulation.*
 [FR Doc. 99-11998 Filed 5-11-99; 8:45 am]
 BILLING CODE 7590-01-P

OFFICE OF THE TRADE REPRESENTATIVE

Notification of Locations and Times for Public Hearings

AGENCY: Office of the United States
 Trade Representative (USTR).

ACTION: Trade Policy Staff Committee
 (TPSC) notification of locations and
 times for public hearings.

SUMMARY: A notice was published in the
Federal Register on April 14, 1999 (Vol.
 64, No. 71, page 18469) announcing
 TPSC public hearings to be held in
 Washington, DC; Chicago, IL; Atlanta,
 GA; Los Angeles, CA; and Dallas, TX.
 That notice invited oral testimony and/
 or written comments of interested
 parties to assist the Administration in
 its efforts to develop proposals and
 positions concerning the agenda of the
 third Ministerial Conference of the
 World Trade Organization (WTO). This
 notice announces the specific times and
 locations for the hearings in each city.
FOR FURTHER INFORMATION CONTACT: For
 procedural questions concerning public
 comments and/or public hearings
 contact Gloria Blue, Executive
 Secretary, Trade Policy Staff Committee,
 Office of the United States Trade
 Representative at (202) 395-3475. All
 other questions concerning the WTO
 negotiations should be addressed to the
 agency's Office of WTO and Multilateral
 Affairs at (202) 395-6843.

SUPPLEMENTARY INFORMATION: All
 hearings will begin at 9:30 a.m.
 Following receipt of requests to testify,
 witnesses will be notified directly of
 their scheduled date and time to appear.
 The exact locations of the hearings are
 as follows:

Washington, May 19-20 (and 21, if
 necessary): White House Conference
 Center, Truman Room, 726 Jackson
 Place, NW, Washington, DC 20502
 Chicago, June 7 (and 8, if necessary):
 James R. Thompson Center, Room 9-
 040, 100 West Randolph Street,
 Chicago, IL 60601

Atlanta, June 10 (and 11, if necessary):
 Richard B. Russell Federal Building,
 Main Auditorium, 75 Spring Street,
 Southwest, Atlanta, GA 30303

Los Angeles, June 21 (and 22, if
 necessary): Central Library, Los

Angeles Public Library, Mark Taper
 Auditorium, 630 West Fifth Street,
 Los Angeles, California 90071
 Dallas, June 24 (and 25, if necessary):
 Federal Reserve Bank of Dallas
 Auditorium, 2200 North Pearl Street,
 Dallas, Texas 75210

All deadlines remain the same as
 stated in the previous notice.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.
 [FR Doc. 99-11931 Filed 5-11-99; 8:45 am]
 BILLING CODE 3901-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Annual Report on Discrimination in Foreign Government Procurement Pursuant to Executive Order 13116 ("Title VII")

AGENCY: Office of the United States
 Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that
 the United States Trade Representative
 ("USTR") has submitted the annual
 report on discrimination in foreign
 government procurement, published
 herein, to the Committees on Finance
 and on Governmental Affairs of the
 United States Senate and the
 Committees on Ways and Means and on
 Government Reform and Oversight of
 the United States House of
 Representatives, pursuant to the
 reinstated procedures of Title VII of
 the Omnibus Trade and
 Competitiveness Act of 1988 ("Title
 VII"), as amended, as set forth in
 Executive Order No. 13116 of March 31,
 1999.

DATES: The report was submitted on
 April 30, 1999.

FOR FURTHER INFORMATION CONTACT:
 Stephen Kho, Assistant General
 Counsel, Office of the US Trade
 Representative, 600 17th Street, NW,
 Washington, DC 20508, 202-395-3581.

SUPPLEMENTARY INFORMATION: The text of
 the USTR report is as follows:

Office of the United States Trade Representative, Washington, DC

April 30, 1999

Annual Report on Discrimination in Foreign Government Procurement

I. Legal Authority

On March 31, 1999, the President
 signed Executive Order 13116, which
 largely reinstates the provisions of
 Title VII of the Omnibus Trade and
 Competitiveness Act of 1988 ("Title
 VII"), as amended. Under the Executive

Order, the United States Trade
 Representative ("USTR") is required to
 submit to the Congress by April 30 of
 each year a report identifying foreign
 countries:

(1) That have failed to comply with
 their obligations under the WTO
 Agreement on Government Procurement
 ("GPA"), Chapter 10 of the North
 American Free Trade Agreement, or
 other agreements relating to government
 procurement to which that country and
 the United States are parties; or

(2) That maintain, in government
 procurement, a significant pattern or
 practice of discrimination against U.S.
 products or services which results in
 identifiable harm to U.S. businesses,
 when those countries' products or
 services are acquired in significant
 amounts by the U.S. Government.

Within 90 days of the submission of
 the report, USTR must initiate under
 section 301 of the Trade Act of 1974, as
 amended, an investigation with respect
 to any country identified in the report,
 unless USTR determines that a
 satisfactory resolution of the matter has
 been achieved. If the matter is not
 resolved during that period and USTR
 determines that the rights of the United
 States under an international
 procurement agreement are being
 violated, or that any discriminatory
 procurement practices exist, the
 Executive Order requires USTR, *inter
 alia*, to initiate formal dispute
 settlement proceedings under the
 international agreement in question or
 revoke any waivers for purchasing
 requirements granted to the
 discriminating foreign country.

Title VII has been a useful and
 effective tool in challenging foreign
 governments' procurement barriers. The
 reinstatement of Title VII procedures
 through Executive Order 13116 sends a
 strong signal that the President is
 committed to protecting U.S. interests in
 international procurement markets.

II. Identification of Foreign Countries and their Discriminatory Procurement Practices

From 1991 to 1996, USTR conducted
 six annual reviews under Title VII.
 During that time, six identifications
 were formally made, while numerous
 potentially discriminatory government
 procurement practices were noted.
 USTR achieved satisfactory resolution
 with respect to eight discriminatory or
 potentially discriminatory practices,
 including a GATT dispute settlement
 proceeding, with regard to the
 procurement of an electronic toll booth
 collection system in Norway, in which
 the panel found in favor of the United
 States.

Two other Title VII determinations remain outstanding: In 1992, USTR identified the European Union ("EU") as engaging in discriminatory procurement practices of government-owned telecommunications in certain member states; the United States imposed sanctions in 1993, which are still in place today. Also, in 1996, USTR identified Germany for discriminating in the heavy electrical equipment sector and for its failure to adequately implement its obligations under the 1993 U.S.-EU Memorandum of Understanding on Government Procurement. As a result, Germany agreed to seek legislative changes to end its discriminatory practices and the United States agreed to temporarily suspend sanctions (see below for an update).

After consulting with other executive agencies and U.S. businesses, USTR has determined not to identify any countries under Title VII, because the practices of concern are either being addressed under another trade dispute mechanism, do not meet the criteria for identification, or are currently under scrutiny as a result of previous identifications. The Administration will continue to carefully monitor these practices in making its determinations next year, and the United States will move forward with WTO dispute settlement proceedings to challenge Korea's government procurement practices in the construction of the Incheon International Airport.

A. Korea

As a party to the GPA, the procurement market for the Republic of Korea (ROK) was estimated at approximately \$3.8 billion in 1998. Of this, about \$1.3 billion was subject to international tendering procedures in accordance with GPA rules. In addition to purchases of goods and services, it is estimated that Korea awarded construction contracts valued at \$6.1 billion in 1998.

Presently, Korea is constructing the Incheon International Airport ("IIA"). Valued at \$6 billion, IIA is one of the largest public works projects in Asia, and the largest underway in Korea. Although the airport is about half completed, procurements over the next several years will be worth billions of dollars, including those for (1) meteorological radar, (2) Satellite Navigation System (CNS/ATM), (3) control facilities for parking, (4) a cargo x-ray system, and (5) a passenger x-ray system. It is important that U.S. firms have fair access to these contracts.

During negotiations for Korea's accession to the GPA in 1991-92, the

United States obtained Korea's commitment that the entities responsible for airport construction would be subject to GPA disciplines. However, soon after negotiations were concluded, Korea created another entity—the Korea Airport Construction Authority ("KOACA")—to manage procurement for IIA construction. In February of 1999, the Korean Government made another change to its airport procuring authority by changing KOACA into the Incheon International Airport Corporation (IIAC). Korea now asserts that, because KOACA and/or IIAC are not expressly listed as a covered entity in its GPA schedule of concessions, procurement for the IIA is not covered by the GPA.

In seeking to participate in the IIA project, U.S. suppliers have repeatedly faced discriminatory tendering practices that hamper their ability to compete effectively for related procurement contracts. These Korean Government practices include the following:

- Requiring that a firm hold four Korean licenses, including a manufacturing license, in order to be eligible to bid as a prime contractor, thereby precluding foreign firms that do not have a license to manufacture in Korea from bidding as a prime contractor;
- Requiring that foreign firms participate in a bid only as consortium members or subcontractors to local firms acting as the prime contractors; and
- Failing to provide effective procedures to enable suppliers to challenge alleged breaches of the GPA arising in the context of individual procurements.

U.S. Government officials sought to resolve these matters through representations to the Korean Government in bilateral and multilateral fora. Because Korea did not confirm that procurement for airport construction is subject to the GPA, on February 16, 1999, the United States requested consultations with Korea under WTO dispute settlement procedures. Consultations were held on March 17, 1999. The U.S. Government will take further steps necessary to resolve this matter.

B. Japan

The United States and Japan have concluded bilateral Government Procurement Agreements covering six key sectors: telecommunications, computers, construction, supercomputers, medical technology, and satellites. While Japan's implementation of some of these agreements, such as the Medical

Technology Agreement, has led to significant improvement in market access for U.S. firms, results to date under other agreements, such as the Computer, Construction, Telecommunications, and Supercomputer Agreements, have been highly disappointing. The Administration remains seriously concerned that the objectives of these agreements, which focus on the improvement of foreign firms' access to and expansion of sales in the Japanese public procurement market, are not being met. Further, in light of the Japanese Government's increased fiscal spending in public works and "21st century technologies," we believe that U.S. firms should have a fair opportunity to compete for these procurements in line with the obligations contained in our bilateral agreements. The United States has made clear our concerns to the Japanese Government with respect to those areas where we believe Japanese implementation could be improved. In addition, the U.S. Government has offered new proposals for generating progress in several areas, while proposing various ways in which the agreements can be made more effective. Our success to date in pursuing this agenda, however, has been limited, and further action is necessary in order to ensure that foreign firms have fair, open, and transparent access to Japanese markets. Particularly problematic are Japanese Government procurement practices related to computer goods and services and public works projects.

Japan—Market Access for Computer Products and Services: U.S. computer makers, global leaders in technology and performance, have long had a disproportionately low share of the Japanese public sector market as compared with their strong showing in the Japanese private sector. To address this fact, the United States and Japan concluded a bilateral agreement on government procurement of computers (covering computer hardware, software, and services) in 1992. Under this agreement, the Japanese Government agreed to institute changes to its procurement system based on the principles of non-discrimination, transparency, and fair and open competition, with the aim of expanding government purchases of foreign computer products and services. However, there is still much to be done in this sector to increase transparency, openness, and fairness. In addition, while there has been some sporadic increases in Japanese public procurement of foreign computer

products and services, the overall aim of the agreement has not been met on a sustained basis.

The U.S. Government continues to receive reports from U.S. industry of problems in Japanese Government procurement of computers, including unequal access to information, persistence of unreasonably low bids, and a lack of strong efforts by the Japanese Government to ensure that sole-sourcing procurements by government entities decrease significantly, as called for in our bilateral agreement. U.S. industry has also noted that even where bidding is open, Japanese purchasing agencies often evaluate bids in a way that encourages excessively low-priced bids. These factors have created an environment whereby U.S. computer companies enjoy only limited access to the Japanese Government procurement markets. An important result of these problems has been a steady, long-term decrease in the foreign share of the Japanese public sector Personal Computer ("PC") market since 1992 and a significant decline in the foreign share of the Japanese public sector mainframe and mid-range computer market in the last two years for which there is data. The next annual review of this agreement, covering 1997 data, is scheduled for May in Tokyo. Despite signs that there may have been an increase in Japanese Government purchases of foreign mainframe and mid-range computers in 1997, continuing poor performance of state-of-the-art foreign-made PCs, and the fact that foreign firms have continued to hold approximately 35 percent of Japan's overall private sector computer market over the last several years, are evidence that significant non-competitive forces are still at work in the Japanese public sector computer market. As a result, the U.S. Government remains committed to fully address discriminatory and non-transparent practices in this sector.

In light of the poor results under the agreement to date, lingering concerns over fairness and transparency, and rapid changes in technology in this sector, last August the U.S. Government presented the Japanese Government with a set of proposals devised to improve implementation of the agreement and bring its provisions into line with advances in technology. These include taking specific steps to further improve the bid evaluation process to give greater weight to technological innovation and other key non-price factors. *retch*

To date, the U.S. Government has been extremely disappointed with the

Japanese Government's reluctance to seriously consider these proposals, particularly since the result would be a more competitive procurement system and better value for Japanese Government entities. The U.S. Government continues to urge Japan to undertake further steps to ensure that the provisions of this agreement are fully implemented and that its objectives are met.

Japan—Market Access for Construction: American firms are well-known for their top-notch expertise in design/consulting and construction projects. Despite two bilateral agreements intended to enhance access to Japan's public works market, American companies continue to fare poorly and the objectives of the agreements are not being achieved. The 1991 Major Projects Arrangement is intended to familiarize foreign firms with Japan's public works market while the main purpose of the 1994 Public Works Agreement is to make bidding and contracting procedures more transparent and objective. The U.S. Government is seriously concerned by the fact that, at the June 1998 annual review, it was recognized that U.S. firms had won only \$50 million in contracts over the preceding year—less than one percent of Japan's \$250 billion public works market and only half of the \$100 million in contracts won the year before.

The United States has focused on two key areas that require serious attention in this sector—Japanese restrictions on the formation of joint ventures for construction projects and the very low number of design/consulting procurements open to foreign firms. Regarding joint venture formation for construction projects, the United States has pressed Japan to eliminate the "three-company rule," under which the Japanese Government limits to three the number of firms that can participate in a joint venture. In addition, the United States has asked Japan to allow companies, rather than procuring entities, to determine whether or not a supplier can bid as a solo bidder or as a member of a joint venture. To date, Japan has rejected these requests. The United States will continue to urge Japan to eliminate these restrictions, thereby promoting greater competition in this sector.

With regard to the low number of design/consulting procurements open to foreign firms, Japan's Construction Ministry recently has undertaken initiatives in response to U.S. concerns. These initiatives include allowing design/consulting firms greater freedom to partner on projects; combining design contracts in a way that would lead to

greater coverage of procurements by the agreements, thereby increasing opportunities for foreign firms; and contracting out all future design work (instead of conducting design "in-house"). The United States is encouraging other ministries to follow the Construction Ministry's lead and is monitoring closely these initiatives to see if they result in progress under the agreements.

The U.S. Government continues to urge Japan to take immediate, concrete steps in both the design/consulting and construction areas that will lead to increased business opportunities for American companies. The United States has made clear our expectation that progress be made before the next annual review of the public works agreements, which is tentatively scheduled for July 1999.

C. Germany

In April 1996, USTR identified Germany in the Title VII report for its failure to comply with market access procurement requirements in the heavy electrical equipment sector. The identification was based on irregularities in the procurement process for two separate steam turbine generator projects. In particular, the Title VII Report noted a "pervasive institutional problem" with respect to Germany's implementation of a remedies system for challenging procurement decisions. The imposition of trade sanctions, however, was delayed until September 30, 1996, because consultations with Germany suggested a resolution might be possible given additional time. On October 1, 1996, then-Acting USTR Barshefsky announced that the German Government had agreed to take steps to ensure open competition in the German heavy electrical equipment market, including reform of the government procurement remedies system as well as outreach, monitoring, and consultation measures. The United States did not, however, terminate the Title VII action at that time because legislation implementing reform of the procurement remedies system needed to be enacted.

In May 1998, the German parliament passed legislation requiring significant reforms in the German procurement system, including reforms with respect to bid challenge procedures. This legislation was signed and entered into effect on January 1, 1999. The Administration has advised the German Government that it will review the status of this Title VII identification on the basis of practical experience

demonstrating the effective implementation of this legislation.

III. Transparency in Government Procurement

Active support for early conclusion of a WTO Agreement on Transparency in Government Procurement is a key element of the Administration's ongoing efforts to promote the development of transparent procurement environments throughout the world. Drawing largely on proposals made by the United States, WTO Ministers agreed at the 1996 Singapore Ministerial Conference to establish the WTO Working Group on Transparency in Government Procurement. The Working Group's mandate is to: (1) conduct a study on transparency in government procurement practices; and (2) based on this study, develop elements for a multilateral agreement on transparency in government procurement.

Conclusion of a WTO agreement on transparency in government procurement will serve a wide range of important U.S. interests. It will help to establish a more stable and predictable business environment for U.S. exporters, even in markets where governments maintain "buy national" or other purchasing restrictions. It will also build on the "good governance" reforms that a growing number of countries have adopted in response to the international financial crisis, and the deeper structural impediments to efficient long-term growth and development.

In 1997 and 1998, the Working Group's initial study of WTO Members' general procurement policies and objectives revealed broad international agreement on many key principles. Based on this work and subsequent consultations, the Working Group is poised to move forward with negotiations on the elements of a transparency agreement. Those elements will likely include:

- Information on National Legislation and Procedures;
- Information on Procurement Opportunities;
- Information on Tendering and Qualification Procedures;
- Transparency of Decisions on Qualification;
- Transparency of Decisions on Contract Awards; and
- Domestic Review Procedures.

The United States and its Quad partners have urged that the Working Group seek to conclude these negotiations by the Third WTO Ministerial Conference, in late 1999.

IV. International Government Procurement Agreements

A. The WTO Agreement on Government Procurement ("GPA")

The GPA, which entered into force on January 1, 1996, is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking, and its membership is limited to the 26 WTO members that signed the Agreement in Marrakesh or that subsequently acceded to it. The current Members are the United States, the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), Aruba, Canada, Hong Kong, Israel, Japan, Liechtenstein, Norway, the Republic of Korea, Singapore, and Switzerland. Chinese Taipei, Iceland, and Panama are in the process of negotiating accession to the GPA, although by the terms of the GPA, Chinese Taipei must become a WTO member prior to GPA accession. In their protocols of accession to the WTO, Bulgaria, the Kyrgyz Republic, Latvia, Mongolia, and Slovenia have committed to pursue GPA accession.

In its report to the 1996 Singapore Ministerial Conference, the Committee on Government Procurement, which monitors the GPA, stated its intention to undertake an "early review" of the GPA starting in 1997. The review would be aimed at the implementation of Article XXIV:7(b) and (c) of the GPA, which call for further negotiations to achieve the following objectives:

- Simplification and improvement of the GPA, including, where appropriate, adaptation to advances in the area of information technology and streamlined procurement methods;
- Expansion of coverage of the GPA; and
- Elimination of discriminatory measures and practices which distort open procurement practices.

GPA Members have agreed that one of their principal objectives for the review of the Agreement is to promote expanded membership of the GPA by making the Agreement more accessible to non-members.

In the course of the review, many Members have also noted the importance of ensuring that the GPA's rules accommodate the use by governments of new information technologies and other innovations in government procurement procedures. Many governments now use electronic forms of publication for procurement notices and other documents to improve dissemination capabilities and lower

costs for both suppliers and governments. The United States believes that the GPA must accommodate such improvements in the operation of procurement systems. The United States and other Members have also recognized the potential for simplifying the Agreement's statistical reporting requirements, an issue that is of particular interest to members' sub-central procurement authorities and to other countries that may potentially be interested in acceding to the GPA.

The GPA establishes a procedure for monitoring members' implementing legislation. The United States has used this procedure to better understand and comment on procurement practices of concern to U.S. suppliers, such as the practices of Korea's airport construction authorities and the application of the EU "Utilities Directive."

B. Chapter 10 of the North American Free Trade Agreement ("NAFTA")

In Chapter 10 of the NAFTA, signatories agreed to open the majority of non-defense related federal procurement opportunities to competition from all North American suppliers. Because Mexico is not a member of the GPA, its participation in the NAFTA marked the first time that Mexico had committed to eliminate discriminatory government procurement practices. While differences exist between NAFTA Chapter 10 and the GPA (e.g., with respect to thresholds and sub-federal coverage), the principles of non-discrimination, fair and open competition, and transparency are established with equal force in both agreements.

In October 1998, agreement was reached by the delegations of Canada, Mexico, and the United States to the NAFTA Working Group on Government Procurement with respect to the subject of electronic transmission, pursuant to Article 1024(5) of the NAFTA. Particularly, the delegations agreed that the NAFTA Parties may publish invitations to participate for all procurements in either paper or electronic format, or both.

Recently, the Administration has received complaints from U.S. exporters that Mexico is not adhering to the NAFTA requirement that the time limit for the receipt of tenders must be open for a minimum time period that is consistent with Article 1012, which allows suppliers to prepare and submit meaningful tenders. Generally, the period for the receipt of tenders is to be no less than 40 days from the date of publication of a Request for Proposal. A 1997 study commissioned by Canada indicated that this problem is pervasive

in Mexican procurement procedures subject to the NAFTA. In the NAFTA Negotiating Group on Government Procurement, the United States has joined Canada in seeking clarification on this issue and in urging Mexico to ensure that its procurement authorities comply with the relevant NAFTA commitments.

C. Free Trade Area of the Americas ("FTAA")

The United States is presently involved in discussions for creating a new free trade area, the FTAA. As an active participant in the Negotiating Group on Government Procurement, and as the discussions involving government procurement is in the very early stages, the United States is generally interested in (1) concluding a text embodying the principles of transparency and due process in government procurement, leading to a recommendation for agreement at the October 1999 FTAA Ministerial meeting to implement the results of this work by December 1999; (2) achieving agreement on a set of commitments which will ensure non-discrimination in government procurement within a scope to be negotiated, to be implemented as part of the conclusion of the FTAA; and (3) achieving agreement on the basic elements of a common procurement reporting system.

V. Other Trade-Distorting Practices

A. Bribery and Corruption

Among the most consistent complaints the Administration receives from U.S. industry and labor representatives is that bribery and corruption compromise U.S. market access in many foreign markets. This is particularly true for big ticket infrastructure projects for which preparation of a bid package alone can cost millions of dollars. U.S. firms often find that they are bidding on projects with little or no certainty as to whether the offered technology and price are going to be the primary considerations in the award of contracts. Despite their concerns, however, many U.S. firms have in the past been hesitant about coming forward publicly with cases in which they have seen bribery and corruption influence contract awards, because of fears that they may experience a commercial backlash with respect to future contracts.

These circumstances call for government-to-government initiatives to root out bribery and corruption in international procurement markets. The Administration is aggressively pursuing this objective in a wide range of

international fora. The recent entry into force of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which obligates its 34 parties to impose criminal sanctions on the offering and payment of bribes in procurement markets and other international commercial transactions, represents a major step forward. The United States and 33 other countries have signed the OECD Convention.

Furthermore, twenty-five members of the Organization of American States ("OAS"), including the United States, have signed the OAS Inter-American Convention Against Corruption, which obligates its parties to impose criminal sanctions, and provides for international legal cooperation in combating corrupt practices in international business transactions. The Administration looks forward to early ratification of the OAS Convention.

B. Offsets in Defense Trade

When purchasing defense systems from U.S. defense prime contractors, many U.S. trading partners require compensation in the form of offsets as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services. Offsets include mandatory co-production, licensed production, subcontractor production, technology transfer, countertrade, and foreign investment. Offsets may be directly related to the weapon system being exported, or they may take the form of compensation unrelated to the exported item, such as foreign investment or countertrade.

Prime contractors view offset arrangements as a necessity for success in the international marketplace. However, offset requirements cause prime contractors to select subcontractors based on their being located in the country requiring the offset versus best value, thereby adversely affecting potential U.S. subcontractors. Originally designed to enhance allied national security, offsets increasingly have become economic development tools for the countries that demand them. Furthermore, there has been a recent trend to fulfill offset requirements with non-defense products versus defense products.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 99-11930 Filed 5-11-99; 8:45 am]

BILLING CODE 3190-01-P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of Meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a meeting of the Council. The Council will discuss its 1999 work program and schedule and consider action on a conflict of interest guidelines for non-government members of the Council. The meeting will also consider matters raised by individual Council members. The Council's business meeting will precede a one-day seminar on May 18, 1999, sponsored by the Council on Intercity Rail Passenger Services—Past, Present and Future. (FR 5/6/99).

DATES: The Council meeting is scheduled from 4:30 p.m. to 6:30 p.m. on Monday, May 17, 1999.

ADDRESSES: The meeting will be held in Room 9210, Department of Transportation, Nassif Building, 400 7th St. SW Washington, DC. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM-ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366-0591; FAX: 202-493-2061.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires: that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President or Congressional leaders. Each member is to serve a five year term.

Issued in Washington, DC May 6, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99-11904 Filed 5-11-99; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD07-99-008]

Bridge of Lions; Atlantic Intracoastal Waterway, St. Augustine, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Coast Guard together with the Federal Highway Administration (FHWA) and the Florida Department of Transportation (FDOT), will hold a public hearing to receive information concerning the environmental and navigational impacts of alternate bridge designs being considered for the replacement or rehabilitation of the Bridge of Lions. The bridge is located on State Road A1A where it crosses the Atlantic Intracoastal Waterway (AIWW), mile 777.9, at St. Augustine, Florida. The hearing will allow interested parties to present comments and information concerning the bridge alternates under consideration.

DATES: The hearing will start at 7 p.m. on Monday, June 7, 1999. Comments must be received by July 7, 1999.

ADDRESSES: The hearing will be held at the St. Johns County Administration Building, 4010 Lewis Speedway Road, St. Augustine, Florida. Written comments may be submitted to, and will be available for examination between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the office of the Commander (oan), Seventh Coast Guard District, Bridge Section, Brickell Plaza Federal Building, 909 SE First Avenue, Miami, Florida 33131-3050. Please submit all comments and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. N.E. Mpras, Chief, Office of Bridge Administration, Commandant (G-OPT), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593 (202 267-0368); Commander Eugene Gray, U.S. Coast Guard, Chief, Aids to Navigation and Waterways Management Branch,

Seventh Coast Guard District, Miami, FL (305) 536-5621; Mr. Joel Glenn, District Environmental Management Engineer, Florida Department of Transportation, Lake City, FL (904) 752-3300; or Mr. Mark Bartlett, Program Operations Engineer, Federal Highway Administration, Tallahassee, FL (850) 942-9598.

SUPPLEMENTARY INFORMATION:

Background

The Bridge of Lions is a historic, sub-standard two-lane structure across the AIWW. The Coast Guard is concerned about the restrictive horizontal clearance that the existing bridge and fender system now imposes on commercial tug and barge traffic on the AIWW. These navigational concerns must be addressed sufficiently to allow the Coast Guard to accept an application for a proposed bridge replacement or rehabilitation at this location on the AIWW. The Coast Guard has been involved in temporary remedial measures to insure the safety of navigation through the existing bridge structure while plans are being prepared for a new or rehabilitated bridge at the reach of the AIWW. These measures include the placement of temporary mooring dolphins upstream and downstream of the bridge to provide tugs with tows a place to moor while waiting for slack water conditions to make safe passage of the structure. These temporary mooring dolphins remain in place at the time of this public hearing but the Coast Guard does not consider them a suitable long-term solution.

The FHWA is lead federal agency for the environmental documentation for this project. The Coast Guard has been involved as a cooperating agency during the preparation of the Draft Environmental Impact Statement (DEIS). The DEIS identifies no preferred alternate for implementation. The selection of a preferred alternative will be made only after a thorough evaluation of the merits of each. The Coast Guard, in cooperation with the FDOT, owner of the bridge, and the FHWA, welcomes your comments on the Bridge of Lions project study. A U.S. Coast Guard Bridge Permit approving the location and clearances of the alternative eventually selected for construction is required before construction begins. Accordingly, it is extremely important to receive all information on the alternatives, which may present serious problems for navigation and bridge safety.

Procedural

Any person who wishes may appear and speak or present evidence at this public hearing. Persons planning to speak at the hearing should notify Mr. Joel Glenn or Mr. Bill Henderson with the Lake City office of the Florida Department of Transportation, or the Commander (oan), Seventh Coast Guard District, Bridge Administrator, at the telephone numbers listed under **FOR FURTHER INFORMATION CONTACT** any time prior to the hearing, indicating the amount of time required. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Written statements and exhibits may be delivered before or during the hearing, or they may be submitted for up to 30 days following the date of the hearing to the Coast Guard office listed under **ADDRESSES**. The DEIS is available in print format in FDOT offices as well as all St. Johns County, Florida public libraries. It is the official document sent to all governmental agencies for the final round of comments on whether to rehabilitate or replace the existing bridge.

Information on Services for Individuals with Disabilities

For information about facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Commander Eugene Gray, U.S. Coast Guard, Chief, Aids to Navigation and Waterways Management Branch, Seventh Coast Guard District at the number under **FOR FURTHER INFORMATION CONTACT** As soon as possible.

Authority: 33 CFR 115.60.

Dated: May 5, 1999.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99-11927 Filed 5-11-99; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Driver History Initiative Projects; Fiscal Year 1999 Funding

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of solicitation.

SUMMARY: This notice solicits proposals from States for projects to improve the timeliness, accuracy, and completeness of reporting and recording of commercial motor vehicle (CMV) traffic

convictions within a State and between States. Where safety and identification of traffic offenders can be improved, these grants would provide funding to assist States to improve the reporting and recording of traffic convictions. The FHWA, in partnership with the National Highway Traffic Safety Administration (NHTSA), will provide grant funds to the selected States to carry out the projects for driver improvements and enhancements.

DATES: Proposals must be submitted on or before August 10, 1999.

ADDRESSES: Submit all proposals to: the State Director, Department of Transportation, Federal Highway Administration, Office of Motor Carrier and Highway Safety in your State. Those desiring notification of receipt of their proposal submission must include a self-addressed, stamped envelope or postcard. If you need the name and address of the State Director in your State, you can call (202) 366-9579 between the hours of 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Norm Anger, Office of National and International Safety Programs, (202) 366-2170, or Mr. Phillip Forjan, Office of Motor Carrier Research and Standards, (202) 366-4001; For legal issues: Ms. Suzanne O'Malley, Office of Chief Counsel, (202) 366-1367 Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 am to 4:15 pm, e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

Background

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Pub. L. 105-277, 112 Stat 2681, enacted on October 21, 1998, set aside grant funds for states to carry out projects for driver improvements and enhancements.

This is the second year in which the FHWA, in cooperation with the NHTSA,

is making funds available to States desiring to improve their CMV driver license adjudication and data exchange systems. While the funding is primarily intended to improve driver license adjudication reporting and information exchange for CMV drivers, it does not preclude States' non-commercial systems from benefitting from any system improvements. The agencies are seeking grant applications from States willing to undertake a systematic review of their license citation and conviction reporting systems and the development of plans to improve the accuracy, completeness and timeliness of driver license information exchange with courts, prosecutors, and law enforcement. This may include procedural changes within the State licensing agency, new or expanded communications with courts, prosecutors and police, or perhaps regulatory and/or legislative changes. The initiative is a collaborative effort of the FHWA and the NHTSA, which jointly will provide the funding, as well as the American Association of Motor Vehicle Administrators (AAMVA), which will provide technical support during all phases of the projects.

Extensive studies and research conducted over a period of years have found that driver error is a major cause of motor vehicle crashes. Driver error is a complex problem with many components including age, experience, time of day, extent of familiarity with the roadway, emotional/physical/mental state, traffic patterns, etc. Improving driver behavior is an essential component to improving highway safety. Federal, State, and local governments spend millions of dollars annually on training, education, public information and law enforcement efforts to protect the motoring public by detecting and deterring unsafe driver behavior. The enforcement component of these programs produces thousands of citations for driving violations every day. This Driver History Initiative is designed to assist States to answer the question of what happens to those convictions.

The backbone of the effort to deal with unsafe drivers is the driver control system. This is the adjudicatory framework by which law enforcement, prosecutors, courts and motor vehicle licensing agencies issue citations, adjudicate driving offenses, report those offenses for entry on the driver record, and exchange that information among the participants in that State's system and with licensing and adjudication systems outside that State. If the driver control system breaks down, or if it is not working efficiently, there is no

method for identifying potential problem drivers for remediation. Without early detection and corrective action, these violators can develop into chronic offenders and become the problem drivers that cause crashes and injuries, and fatalities. The accurate and timely exchange of driver licensing information between jurisdictions can save lives, and the Federal government's implementation of these grants is designed to achieve that objective. In addition, timely, accurate and complete recording of traffic adjudications insures that the millions of dollars spent annually to fund roadside traffic enforcement achieve maximum safety benefit and that officers are not needlessly placed at risk when conducting traffic enforcement activities.

FY 1998 Awards: A Strong Beginning

The Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. 105-66, 111 Stat. 1425, made available \$1 million dollars in Information Systems funding for the FHWA for driver program improvements. The FHWA made that full amount available for grants to States for improvement of their traffic adjudication systems. The NHTSA provided \$200,000 in additional funding to support this program, making \$1.2 million available to the States for FY 1998. Twelve States submitted grant proposals, totaling just under \$3 million dollars. Each grant proposal was reviewed based on its adherence to the grant application criteria contained in the **Federal Register** notice published on April 9, 1998 (63 FR 17474) and the extent to which it addressed driver licensing adjudication system problems in that particular State. The results of the review lead to full funding of five proposals, partial funding of four proposals, and no funding to three States, because they either failed to meet the required criteria specified in the notice or did not meet the deadline for submitting grant applications.

Some of the projects which were funded are as follows: an analysis of a current driver citation reporting process and the design of a new system to automate this process; a study on the impact of diversion and deferral programs on the accuracy and integrity of driver histories; and the reprogramming of a driver control system to accept driver crash data, a vital component of the driver control record.

Driver History Initiative Projects

The FHWA seeks to improve the timeliness, completeness, accuracy, and

clarity of State driver history files by promoting an integrated driver licensing system. Such a system will improve and enhance the driver control system by its ability to facilitate identification, prosecution, and adjudication of problem drivers. It will benefit drivers who have satisfied the penalties or conditions of a driving restriction by promptly updating their driving record. It will ensure that all drivers have complete, accurate, and up-to-date histories available as needed for employment and insurance purposes.

The Initiative will again begin with federally-funded State projects. It will once more involve States that are willing to explore and test new and proven methodologies and protocols, allowing for rapid electronic exchange of driver history information. A major component of the projects will continue to be to test procedures that facilitate citation tracking from issuance to resolution. The projects should also enhance the accuracy, speed, and completeness of driver history information exchange among the various components of the system, including law enforcement, prosecutors, the courts, and driver licensing agencies, both within the State and between States.

The scope of potential projects or plans need not be limited to information systems development, changes, or enhancements. The State may have a system that is technically sound but hampered by State procedures, policies, laws, or legislation preventing the State from utilizing its system in the most efficient and effective manner. The FHWA will entertain proposals that may not involve the system but still would meet the project goals. One example of a procedural problem is the handling of out-of-State convictions. Some States treat paper notification of out-of-State convictions differently than electronic notification of similar convictions; several States lack the authority to assess points or penalties for convictions received electronically. Some States report there are certain out-of-State convictions which they cannot enter on drivers' records because of State-to-State statutory inconsistencies.

Project Goal

The goal of the FHWA is to ensure timely, accurate, and complete reporting and recording of traffic convictions within State courts, State licensing agencies, prosecutors; and between and among States to reliably identify potential problem drivers by enhancing existing systems, developing new

systems, or revising existing procedural practices and/or procedures.

The Initiative's primary objective is to achieve enhancements in the development, exchange, retention, and reporting of driver histories of CMV operators. The FHWA believes that any enhancements to the commercial segment of the driver licensing system will also have a positive effect on processing of traffic offenses for drivers of non-commercial vehicles. While focusing primarily on improving CMV traffic adjudication systems, State proposals that also serve to improve or enhance non-commercial systems ancillary to the CMV improvements are eligible for funding. One of the results of these grants will be to broadly share information among States on methods to improve traffic adjudication and recordkeeping systems. Consequently, States submitting applications for grant funding will be required to report regularly on project activities and progress and share the results of their efforts with other jurisdictions. The FHWA, the NHTSA and the AAMVA will facilitate these efforts and provide technical assistance to all jurisdictions.

Proposal Submission

Required Content of Proposals

While providing flexibility to States, grant proposals must meet certain criteria. The grant proposal criteria are designed to ensure that project proposals will enhance traffic adjudication systems in the State and that key State agencies and organizations participate in approved grant activities. Traffic adjudication systems involve law enforcement, courts, prosecutors, and driver licensing agencies. To be effective, the FHWA and the NHTSA believe that traffic adjudication system improvement projects must be multi-disciplinary and reflect the expertise and commitment of all participants in the system. Consequently, grant applications must specify that all relevant participants in the process are involved in the project. A thorough evaluation design is another key requirement. The proposal must include the following seven items:

1. Identification of a lead Agency for the project.
2. Identification of an interdisciplinary working group within the State, including but not limited to representation from the motor vehicle licensing agency, court system, prosecutors, State law enforcement, Governor's Highway Safety Representatives, and State Motor Carrier Safety Assistance Program (MCSAP) agency.

3. An analysis of existing systems or procedures, including discussion of any driver conviction/deferral programs operating in the State, an outline of system strengths, and definition of areas requiring attention or improvement. The grant proposal should define, analyze, and document user procedures, including projected barriers to project success, such as any statutory limitations that may affect communication and recording of convictions on the system.

4. System requirements, including project scope, whether new technologies would be tested, and methods of gathering, integrating, and facilitating data exchange between various users. If the project is not system-related, describe existing procedures, the problems they generate, proposed new procedures, anticipated outcome, and the means to measure the success or impact of the project or program.

5. A plan for preparing a final report, including the evaluation findings and recommendations for other States regarding the strengths and weaknesses of this project or program. All grant recipients will be required to provide periodic progress reports on funded projects and agree to share project results with other jurisdictions.

6. A detailed plan for implementing the system or procedures, including time lines for completion, along with a detailed budget for the project. The budget must be sufficiently detailed so that it may be evaluated on the costs assigned to each proposed task, the allocation of resources to complete the tasks, the procurement of hardware and/or software (if applicable), staff hours (broken out by labor category), and other costs (e.g., travel, printing, etc.). The budget should closely correspond to the tasks outlined in the implementation plan and be broken out according to the time lines for completion.

7. A detailed description of how the success of the project will be evaluated and measured. This must include specific descriptions of the goals of the project, how progress will be monitored and the final evaluation design and due date.

Submission of Proposals

There will be no formal Request For Proposals (RFP). Proposals responding to this notice must be valid for 180 days and may be funded at any time during that period. Proposals should be submitted with an original and two copies, following the task requirements listed above, to the State Director, Federal Highway Administration, Department of Transportation, Office of Motor Carrier and Highway Safety in

your State. If you need the name and address of the State Director in your State, you can call (202) 366-9579 between the hours of 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Sample Proposal Available

A sample proposal was developed and could be used by the States as a guideline for submitting their own proposals. The sample proposal can be obtained on-line, in portable document format, from the AAMVA web site (<http://www.aamva.org>) and clicking on "Must See Items." If you have any problems retrieving the document from AAMVA's web site, please call (703) 908-2822. The proposal is also available from the FHWA's web site at (<http://www.mcregis.fhwa.dot/forms.htm>) or from the State Director in the FHWA's Office of Motor Carrier and Highway Safety in your State.

Evaluation of Proposals and Award

A panel comprised of representatives from the NHTSA and the AAMVA will assist the FHWA in its technical review of project proposals. The AAMVA and the FHWA will also participate in project monitoring, evaluation, and information sharing with other States. Members of the panel will be available for technical assistance during all phases of the projects and will review the evaluations of each final product. The panel will evaluate each proposal based on the following factors: (1) The intrinsic merit of the proposal; (2) the technical competency of the proposal; (3) the potential for utilization of results; (4) reasonableness of the costs proposed; and (5) adequacy of proposed resources to complete the project requirements satisfactorily, and in a timely manner; and (6) the adequacy of the project evaluation design.

Proposals which most closely meet the seven content criteria and the six evaluation criteria as outlined above will be considered for funding. In addition, it is understood that States which receive funding may be visited by the FHWA representatives who will review the progress of their projects, as well as seek input and feedback on the Initiative.

Project Funding

This notice announces the FHWA's intent to provide funding in FY 1999 for a number of projects relating to driver licensing systems and State driver license procedures. States are invited to submit proposals outlining their projects to the FHWA's Office of Motor Carriers and Highway Safety. The FHWA will fund project management

and implementation of State systems or revision of State procedures. This grant will not require matching funds. The FHWA has \$700,000 available for this purpose in FY 1999 and contemplates making several awards from the proposals submitted. States are also encouraged to explore other funding sources in both the private and public sectors to implement integrated driver history tracking systems.

Authority: Pub. L. 105-277, 112 stat. 2681 (1998); 49 U.S.C. 31102; and 49 CFR 1.48.

Issued on: May 3, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99-11925 Filed 5-11-99; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA-1999-5088]

Fiscal Year (FY) 2000 Implementation Guidance for Public Lands Highways Discretionary Program Funds

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; FHWA solicitation memorandum for FY 2000 funds; request for comments on selection criteria for FY 2001 and beyond.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA-21) continued the public lands highways (PLH) discretionary program through FY 2003. This document provides implementation guidance on the PLH discretionary program for FY 2000 and beyond. Also, it contains information on the selection criteria used by the FHWA in evaluating candidate projects. An implementation guidance memorandum on this topic was issued to division offices soliciting candidate projects from State transportation agencies for FY 2000 public lands highways (PLH) discretionary funding. The text of that memorandum is incorporated here. This document seeks comments from all interested parties on the selection criteria and their continued use by FHWA for FY 2001 and beyond.

DATES: Comments on the selection criteria for PLH discretionary funding for FY 2001 and beyond must be received on or before July 12, 1999.

ADDRESSES: Your signed, written comments on project selection criteria for PLH discretionary funding for FY 2001 and beyond must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S.

DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

Applications for candidate projects for FY 2000 funding should be submitted to the FHWA Division Office in the State of the applicant in accordance with the guidance provided in the solicitation memorandum.

FOR FURTHER INFORMATION CONTACT:

Larry Beidel, Office of Program Administration, (202) 366-1564; or Wilbert Baccus, Office of the Chief Counsel, (202) 366-1396; Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://www.dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

The solicitation memorandum will also be available on the FHWA web site at <http://www.fhwa.dot.gov/discretionary>.

Background

TEA-21, Pub. L. 105-178, 112 Stat. 107 (1998), continued the PLH discretionary program through FY 2003 and provides \$66.6 million in FY 1998 and \$83.6 million in each of FY 1999 through 2003 for the program. On March 4, 1999, the FHWA issued a memorandum to its division offices, located in each State, the District of Columbia and Puerto Rico, soliciting from the State transportation agencies candidate projects for FY 2000 PLH discretionary funding. This memorandum is published here for informational purposes. The

memorandum contains information on the PLH discretionary program, eligible activities, the application process, and the selection criteria used by the FHWA in evaluating candidate projects.

Also, the purpose of this document is to invite comments on the selection criteria used by the FHWA for evaluating candidate projects for FY 2001 and beyond. The attachment to the March 4, 1999, memorandum presents the selection criteria that the FHWA will be using for FY 2000. These criteria reflect areas which are given preference when evaluating candidate projects; however, any project submitted by a State transportation agency which meets the eligibility requirements for this discretionary program can potentially be selected for funding. These are the same general selection criteria that the FHWA has used for several years to evaluate candidates for this discretionary program. Occasionally, a selection criterion may be added for an individual year that reflects a special emphasis area, but for the most part the selection criteria have remained unchanged.

The FHWA plans to continue to use these same basic selection criteria for FY 2001 and beyond for this discretionary program. However, before doing so, the FHWA is interested in the views of the States or others on these selection criteria. Accordingly, comments are invited to this docket on the selection criteria that FHWA will use for the PLH discretionary program for funding available for FY 2001 and beyond.

Publication of the implementation guidance for the public lands highways discretionary program satisfies the requirement of section 9004(a) of the TEA-21 Restoration Act, Pub. L. 105-206, 112 Stat. 685, 842 (1998).

Authority: 23 U.S.C. 202 and 315; 49 CFR 1.48.

Issued on: May 3, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

The text of the FHWA solicitation and implementation guidance memorandum follows:

Action: Request for Projects for Fiscal Year (FY) 2000 Public Lands Highways (PLH) Discretionary Funds (Reply Due: July 1, 1999).
March 4, 1999.

From: Henry H. Rentz HIPA.
for Vincent F. Schimmoller Program Manager, Infrastructure.
To: Division Administrators Program Manager, Federal Lands Highway.

The Transportation Equity Act for the 21st Century (TEA-21) continued the PLH discretionary program through FY 2003. With this memorandum, we are requesting submission of eligible candidate projects for FY 2000 PLH discretionary funds.

TEA-21 authorized \$83.64 million for the PLH discretionary program for FY 2000. Estimating the deductions for FHWA administration, Section 1102(f) of TEA-21, and administrative expenses for Federal land management agencies, and the increase due to the revenue aligned budget authority (RABA) under Section 1105 of TEA-21, it appears that approximately \$70 to \$75 million will be available for allocation to projects in FY 2000. Of this available funding, \$10 million will be used to fund two projects selected for FY 1999 funding that were deferred in order to fund Congressional earmarking in the FY 1999 appropriations act conference report. Therefore, only \$60 to \$65 million will be available for projects in FY 2000.

Attached to this memorandum are the program guidelines that contain information on eligibility, selection criteria, and submission requirements. Please provide this information to your State and work with them to identify viable, quality candidate projects for this program.

We ask that you pay particular attention to the submission requirements listed in the attached guidelines. Many of the candidates submitted last year did not provide all of the necessary information. With the elimination of the region offices, we are relying on you to ensure that all of the applications from your State are completed in accordance with the appropriate submission requirements. This is important to ensure that all candidates receive a fair evaluation. Due to the shortened time frame last year because of the late passage of TEA-21, we were not able to return incomplete

applications, and our evaluation was based on insufficient information in some cases. This year we will return incomplete applications, which could jeopardize consideration of the candidate projects if the applications are not resubmitted in time.

We are requesting that candidate project submissions be received in Headquarters no later than July 1, 1999. *Projects received after this date may not receive full consideration.*

Because the available funding is always far less than the demand, we ask that submissions include only candidate projects that, if funded, can be obligated in FY 2000. Any allocations in FY 2000 will be made on the assumption that the proposed projects are viable and the implementation schedules are realistic. Any unobligated balances remaining on September 15, 2000, will be withdrawn and used for funding future fiscal year requests.

If there are any questions, please contact Mr. Larry Beidel (202-366-1564) of our Office of Program Administration.

Attachment—Public Lands Highways Discretionary Program

Program Guidelines

Background

The Public Lands Highways (PLH) Program was originally established in 1930 by the Amendment Relative to Construction of Roads through Public Lands and Federal Reservations. Funding was provided from the General Funds of the Treasury. The intent of the program is to improve access to and within the Federal lands of the nation. The Federal-Aid Highway Act of 1970 changed the funding source for the program from the General Funds to the Highway Trust Fund, effective in FY 1972. The program has been continued with each highway or transportation act since then, and the latest transportation act, the Transportation Equity Act for the 21st Century (TEA-21, Public Law 105-178), has continued the program through FY 2003.

Statutory References:

23 U.S.C. 202, 203 & 204; TEA-21 Section 1101(a)(8)(B)

Funding

[In millions]

Fiscal Year	1998	1999	2000	2001	2002	2003
Authorization	\$66.6	\$83.6	\$83.6	\$83.6	\$83.6	\$83.6

TEA-21 provides \$196 million in FY 1998 and \$246 million in each of fiscal years 1999 through 2003 for Public Lands Highways. In accordance with 23 U.S.C. 202(a), 34 percent of these funds are available for the PLH discretionary program. For FY 1998, this is \$66.6 million, and for fiscal years 1999 through 2003, this is \$83.6 million per year.

This available funding is reduced by FHWA administration expenses, which may be up to 1.5 percent. The amount of available funding is also impacted by any obligation limitation imposed on the Federal-aid highway program under the provisions of TEA-21 Section 1102(f), Redistribution of Certain Authorized Funds. Under this provision, any funds authorized for the program for the fiscal year, which are not available for obligation due to the imposition of an obligation limitation, are not allocated to the PLH program, but are redistributed to the States by formula as STP funds. In accordance with 23 U.S.C. 204(i), these PLH funds are also available for administration expenses and transportation planning costs of Federal land management agencies.

After these reductions, it is expected that approximately \$70 million will be available for candidate projects each of fiscal years 2000 through 2003. This available funding may also increase or decrease each year depending on the obligation limitation calculation and on the estimated receipts to the Highway Trust Fund.

Federal Share

In accordance with 23 U.S.C. 204(b), the Federal share of the costs for any project eligible under this program is 100 percent.

Obligation Limitation

The PLH discretionary funds are subject to obligation limitation; however, 100 percent obligation authority is provided with the allocation of funds for the selected projects. The obligation limitation reduces the available funding for the program under the provisions of TEA-21 Section 1102(f) discussed above.

Eligibility

Under the provisions of 23 U.S.C. 202(b), the funds shall be allocated "among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations, on the basis of need in such States." Therefore, all States are eligible to apply for PLH discretionary funding.

In accordance with 23 U.S.C. 204(b), the PLH funds are available for any kind of transportation project eligible for assistance under Title 23, United States Code, that is within, adjacent to, or provides access to the areas served by the public lands highway. A "public lands highway" means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel. Federal reservations are considered to include lands owned by the Department of the Interior, Department of Agriculture, Department of Defense and other Federal agencies.

The PLH funds are available for transportation planning, research, engineering, and construction of the highways, roads, and parkways, or of transit facilities within the Federal public lands. Under 23 U.S.C. 204(h), eligible projects under the PLH program may also include the following:

1. Transportation planning for tourism and recreational travel, including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development.
2. Adjacent vehicular parking areas.
3. Interpretive signage.
4. Acquisition of necessary scenic easements and scenic or historic sites.
5. Provision for pedestrians and bicycles.
6. Construction and reconstruction of roadside rest areas, including sanitary and water facilities.
7. Other appropriate public road facilities such as visitor centers.
8. A project to build a replacement of the federally owned bridge over the Hoover Dam in the Lake Mead National Recreation Area between Nevada and Arizona.

In addition, 23 U.S.C. 134(d)(3), as amended by TEA-21 Section 1203, provides that up to "1 percent of the funds allocated under 23 U.S.C. 202 may be used to carry out the transportation planning process for the Lake Tahoe region," and that highway projects included in these transportation plans "may be funded using funds allocated under 23 U.S.C. 202." Applications for these activities, therefore, could also be submitted requesting PLH discretionary funding.

Selection Criteria

The following criteria are used to evaluate the submitted candidates for selection.

The only statutory criterion is found in 23 U.S.C. 202(b): "The Secretary shall give preference to those projects which are significantly impacted by Federal land and resource management activities which are proposed by a State which contains at least 3 percent of the total public lands in the Nation." The following eleven States have at least 3 percent of the nation's Federal public lands: Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming.

FHWA has not established regulatory criteria for selection of PLH discretionary projects; however, in its annual solicitation, FHWA notes that the following criteria are also considered in the evaluation of candidates for this program:

- Equitable distribution of funding among the States—In applying this criterion, the PLH discretionary funding distributed over the past 20 years is considered and two factors are used to determine a State's fair share of this distribution: (1) the State's share of the Nation's Federal public lands and (2) the percentage of an individual State's area that is comprised of Federal public lands. Preference is given to those States that are "behind" in their fair share of the funding.
- Leveraging of private or other public funding—Because the annual requests for funding far exceed the available PLH

discretionary funds, commitment of other funding sources to complement the requested PLH discretionary funding is an important factor.

- Expedient completion of project—Preference is also given to requests that will expedite the completion of a viable project over requests for initial funding of a project that could require a long-term commitment of future PLH funding. For large-scale projects consideration is given to the State's total funding plan to expedite the completion of the project.

- Amount of PLH funding—The requested amount of funding is another consideration. For States that have a relatively small amount of Federal public lands, moderately sized (<\$500,000) project requests are given more favorable consideration.

- State priorities—For States that submit more than one project, consideration is given to the individual State's priorities if specified.

- National geographic distribution of the funding within the PLH program—Although preference is to be given to the States with at least 3 percent of the Nation's public lands, consideration is also given to providing funding to States in the eastern part of the country to provide some geographic balance for the program.

Because the concept of equity was important in the development of TEA-21, project selection will also consider national geographic distribution among all of the discretionary programs as well as congressional direction or guidance provided on specific projects or programs.

Solicitation Procedure

Each year, usually around March, a memorandum is sent from the FHWA Headquarters Office of Program Administration to the FHWA division offices requesting the submission of candidate projects for the following fiscal year's funding. This solicitation is also published in the **Federal Register**. The FHWA division offices provide this solicitation request to the State transportation departments, who are the only agencies that can submit candidates under the provisions of 23 U.S.C. 202(b). The State transportation departments coordinate with local and Federal agencies within their respective States in order to develop viable candidate projects. The State transportation departments submit the candidate applications to the FHWA division offices, who send them in to the Office of Program Administration. Candidate projects are due in FHWA Headquarters usually around the first of July.

The specific timetable for the solicitation process for any particular fiscal year is provided in the solicitation memorandum. The most recent solicitation is provided in these Guidelines for reference.

The candidate project applications are reviewed and evaluated by the Office of Program Administration and an allocation plan is prepared for presentation of the candidate projects to the Office of the Federal Highway Administrator, where the final selection of projects for funding is made. The announcement of the selected projects and the allocation of funds is usually accomplished by the middle of November.

Submission Requirements

Only State transportation departments may submit applications for funding under this program. Although there is not a prescribed format for a project submission, the following information must be included to properly evaluate the candidate projects. With the exception of the project area map, all of the following must be included to consider the application complete. Those applications that do not include these items are considered incomplete and returned.

1. State in which the project is located.
2. County in which the project is located.
3. U.S. Congressional District No. (s) in which the project is located.
4. U.S. Congressional District Member's Name(s).
5. Project Location—Describe the specific location of the project, including route number and mileposts, if applicable.
6. Public Lands Category—Specify what Federal public lands are being served by the project and whether the project is within, adjacent to, or provides access to the public lands.
7. Proposed Work—Describe the project work to be completed under this particular request, and whether this is a complete project or part of a larger project.
8. Project Purpose—The States' submission should show how the proposed project and/or the highway route of which it is a part meet the Federal land and resource management needs in the State. This should include status and adequacy of the existing route with regard to route continuity, capacity and safety and the benefits anticipated from completion of the proposed project.
9. Planning and Coordination—For the proposed project, describe the coordination with and input from the various Federal land management, State, and metropolitan planning agencies involved. Section 204(a) of Title 23, United States Code, as amended, requires all regionally significant Federal lands highways program projects to be developed in cooperation with States and metropolitan planning organizations, and included in appropriate Federal lands highways program, State, and metropolitan plans and transportation improvement programs.
10. Current and Future Traffic—For highway projects provide the current and design year average daily traffic. For other facilities, such as visitor centers, it may be desirable to describe the number of visitors accommodated by the facility.
11. Project Administration—Indicate whether the Federal funds for this project will be administered by the State transportation agency or a Federal Lands Highway Division (FLHD) of FHWA. If the FLHD or other Federal Agencies are involved, the type of involvement, whether it is preliminary engineering or contract administration, or other, should be specified. Also, the FLHD is available to assist with Federal Agency coordination and should provide any data and information requested.
12. Amount of Federal PLH Discretionary Funds Requested—Indicate the amount of Federal PLH funds being requested for that fiscal year. Candidates should only be

submitted from projects that are ready to advance in that fiscal year. If a State is willing to accept partial funding of the request, that should also be indicated. Sometimes partial funding of requests is utilized to provide funding to more projects, since the requests far exceed the funding available.

13. Commitment of Other Funds—Indicate the amounts and sources of any private or other public funding being provided as part of this project. Only indicate those amounts of funding that are firm and documented commitments. The submission must include written confirmation of these commitments from the entity controlling the committed funds.

14. Previous PLH Discretionary Funding—Indicate the amount and fiscal year of any previous PLH discretionary funds received for this project or route.

15. Future Funding Needs—Indicate the estimated future funding needs for the project, including anticipated requests for additional PLH discretionary funding, the items of work to be completed and projected scheduling.

16. Project Area Map—It is suggested that a readable map, clearly showing the proposed project and its relationship to the overall development of a highway route, as well as its relationship to the Federal public lands, be included. The map should also show any previously completed work on this highway route, if any, plus additional work being planned beyond the proposed project.

17. Talking Points Briefing—A one page talking points paper covering basic project information is also needed for use by the Office of the Secretary for the congressional notification process should a project be selected for funding. Each State's request for discretionary funds must include a talking points paper. A sample paper is included in these Guidelines.

State Transportation Agency Responsibilities

1. Coordinate with State, local, and Federal agencies within the State to develop viable candidate projects.
2. Ensure that the applications for candidate projects meet the submission requirements outlined above.
3. Establish priorities for their candidate projects if desired.
4. Submit the applications to the local FHWA division office on time so that the submission deadline can be met.

FHWA Division Office Responsibilities

1. Provide the solicitation memorandum and this program information to the State transportation agency.
2. Request candidate projects be submitted by the State to the FHWA division office to meet the submission deadline established in the solicitation.
3. Review all candidate applications submitted by the State prior to sending them to FHWA Headquarters to ensure that they are complete and meet the submission requirements.
4. Submit the candidate applications to FHWA Headquarters by the established submission deadline.

FHWA Headquarters Program Office Responsibilities

1. Solicit candidates from the States through annual solicitation memorandum.
2. Review candidate project submissions and compile program and project information for preparation of allocation plan.
3. Submit allocation plan to the Office of the Federal Highway Administrator for use in making final project selections.
4. Allocate funds for the selected projects.

FHWA Headquarters Program Office Contact

Larry Beidel, Highway Engineer, Office of Program Administration, Phone: (202) 366-1564, Fax: (202) 366-3988, E-mail: larry.beidel@fhwa.dot.gov

Sample Talking Points Briefing for Secretary

Note: These talking points will be used by the Office of the Secretary in making congressional notification contacts. Since some of the recipients of the calls may not be closely familiar with the highway program, layman's language should be used to the extent possible. Information contained in the talking points may be used by a member of Congress in issuing a press release announcing the discretionary allocation.

Public Lands Highways (PLH) Discretionary Funds

Grantee: <List full name of State

Transportation Agency>

Project: <short name/description of project>

This project provides for reconstructing ___ miles of US 1 in _____ County extending from State Route 2 intersection in Hometown to the County Road 3 in the vicinity of Smallville. Widening 2 feet on either side with improvements on horizontal alignment and installation of 1000 feet of guard rail are included in the project.

FHWA FUNDS: \$xx,xxx,xxx. <requested funds>

Specify other source of funds (for ex: State, local, Forest highways, etc, if any, to supplement Federal funds.

- This project will improve access to the Navajo Indian Reservation and improve the local economy.
- This project is part of the second phase of a 5-year program to reconstruct a 30-mile section of Forest Road 11 (State Route 201) between Town A and Town B.
- The project will be advertised for construction in <month/year> and is scheduled for completion in <month/year>.

[FR Doc. 99-11924 Filed 5-11-99; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92-463 that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR), authorized by Pub. L. 96-466, section 1521, will be held on May 18 through

20, 1999. The meeting will be held at the Department of Veterans Affairs Central Office, Room 430, 810 Vermont Avenue NW, Washington, DC 20420. On May 18 and 19, the meeting will convene at 9:00 a.m. and adjourn at 4:00 p.m. On May 20, the meeting will convene at 9:00 a.m. and adjourn at 12:00 noon. The purpose of the meeting is to review the new case management system (WINRS) which has been introduced into Vocational Rehabilitation field office operations. In addition, the Committee will learn about the "One Step Career Center" concept currently in development at the National Center on Education and the Economy.

On May 18, the meeting will begin with opening remarks and an overview by Mr. Ronald W. Drach, Chairman. A presentation will follow which will examine the computer-based Vocational Rehabilitation Case Management System

(WINRS), both at the field and Central Office reporting levels. The afternoon session will consist of a review of veteran rehabilitation issues.

On May 19, Mr. Jeffrey Green, VA Deputy Ethics Attorney, will brief the VACOR membership on the annual ethics requirements associated with membership and financial disclosure forms. Also, Mr. John Dorrer and Mr. Neil Ridley, of the National Center on Education and the Economy, along with Mr. James Hartman, of the Vets Employment Training Administration, will present information on the "One-Stop Career Center" concept being developed by the Department of Labor. The afternoon session will feature Ms. Violet Parker, Director, Foreign Countries Operations, Veterans Affairs—Canada. She will report on the status of rehabilitation services provided to American military veterans residing in Canada. Finally, Mr. Julius

M. Williams, Jr., Director of the VA's Vocational Rehabilitation Service, will present an update on the vocational rehabilitation program, as well as future program goals and casework projects.

On May 20, the meeting will consist of a review of past unfinished business, recommendations for program changes, and a discussion of future meeting sites and potential agenda topics.

All meetings will be open to the general public. Oral statements will be heard at the May 20 morning meeting. If additional information is needed, please contact Frank J. Donlan, Counseling Psychologist, Department of Veterans Affairs, at (202) 273-7436.

Dated: May 5, 1999.

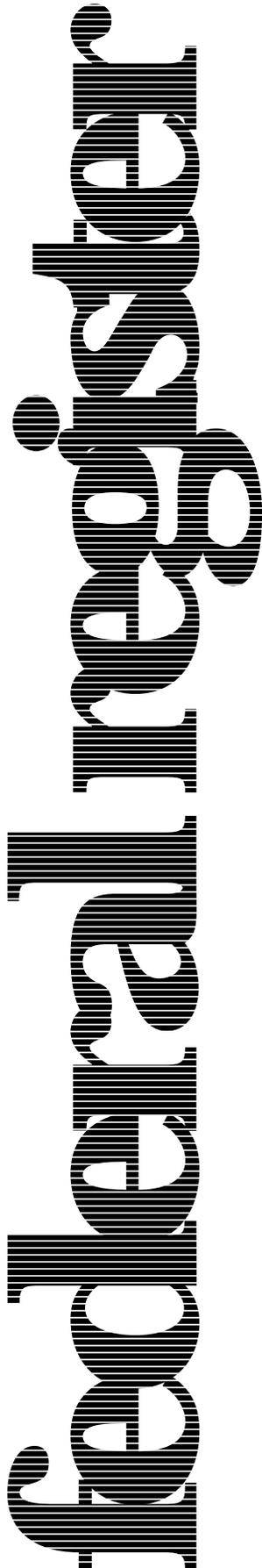
By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99-11923 Filed 5-11-99; 8:45 am]

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Wednesday
May 12, 1999

Part II

**Department of
Transportation**

Federal Railroad Administration

**49 CFR Part 216 et al.
Passenger Equipment Safety Standards;
Final Rule**

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

49 CFR Parts 216, 223, 229, 231, 232, and 238

[FRA Docket No. PCSS-1, Notice No. 5]

RIN 2130-AA95

Passenger Equipment Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing comprehensive Federal safety standards for railroad passenger equipment. The purpose of these safety standards is to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or the general public; and to mitigate the consequences of any such occurrences, to the extent they cannot be prevented. The final rule promotes passenger train safety through requirements for railroad passenger equipment design and performance; fire safety; emergency systems; the inspection, testing, and maintenance of passenger equipment; and other provisions for the safe operation of railroad passenger equipment. The final rule addresses passenger train safety in an environment where technology is advancing and equipment is being designed for operation at higher speeds. The final rule amends existing regulations concerning special notice for repairs, safety glazing, locomotive safety, safety appliances, and railroad power brakes as applied to passenger equipment.

The final rule does not apply to tourist and historic railroad operations. However, after consulting with the excursion railroad associations to determine appropriate applicability in light of financial, operational, or other factors unique to such operations, FRA may prescribe requirements for these operations that are similar to or different from those affecting other types of passenger operations.

DATES: This regulation is effective July 12, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 12, 1999.

ADDRESSES: Any petition for reconsideration should reference FRA Docket No. PCSS-1, Notice No. 5, and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA,

1120 Vermont Avenue, Mail Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Ronald Newman, Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, Mail Stop 25, Washington, D.C. 20590 (telephone: 202-493-6300); Daniel Alpert, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, D.C. 20590 (telephone: 202-493-6026); or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, D.C. 20590 (telephone: 202-493-6036).

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I. Introduction

Passenger railroads offer the traveling public one of the safest forms of transportation available. In the eight-year period 1990-1997, there were 0.89 passenger fatalities for every billion miles of passenger transportation by rail. Nevertheless, collisions, derailments, and other such occurrences continue to occur, often as a result of factors beyond the control of the passenger railroad. Further, the rail passenger environment is rapidly changing. Worldwide, passenger equipment operating speeds are increasing. Passenger trainsets designed to European safety standards have been proposed for operation in the United States-and a few are in operation. Overall, these trainsets do not meet the structural standards that are common for passenger equipment operating in the United States. FRA believes that adherence to such common standards by the nation's passenger railroads has in large measure contributed to the high level of safety at which rail passenger service is currently provided in the United States. However, these standards generally do not have the force of law.

Effective Federal safety standards for freight equipment have long been in place, but equivalent Federal safety standards for passenger equipment have not existed. Further, the Association of American Railroads (AAR) currently sets industry standards for the design and maintenance of freight equipment that add materially to the safe operation of such equipment. However, over the years, the AAR has discontinued the development and maintenance of industry standards for railroad passenger equipment.

FRA must necessarily be vigilant in ensuring that passenger trains continue to be designed, built, and operated with a high level of safety. In general, the railroad operating environment in the United States requires passenger equipment to operate commingled with very heavy and long freight trains, often over track with frequent grade crossings used by heavy highway equipment. European passenger operations, on the other hand, are intermingled with freight equipment of lesser weight than in North America. In many cases, highway-rail grade crossings also pose lesser hazards to passenger trains in Europe due to lower highway vehicle weight. FRA is concerned with the level

of safety provided by passenger equipment designed to European and other international standards when such equipment is operated in the United States.

A clear set of Federal safety standards for railroad passenger equipment is needed that is tailored to the nation's operating environment in order to provide for the safety of rail operations in the United States and to facilitate sound planning for these operations. In furtherance of this safety objective, FRA is pleased by the American Public Transit Association's (APTA) initiative to continue the development and maintenance of voluntary industry standards for the safety of railroad passenger equipment. These standards will complement FRA's safety standards and, thus, will work together to provide an even higher level of safety for rail passengers, rail employees, and the public as a whole.

II. Statutory Background

In September, 1994, the Secretary of Transportation convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November, 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Pub. L. No. 103-440, 108 Stat. 4619, 4623-4624 (November 2, 1994). Section 215 of the Act, as now codified at 49 U.S.C. 20133, requires:

(a) **MINIMUM STANDARDS.**—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—

- (1) the crashworthiness of the cars;
- (2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;
- (3) maintenance and inspection of the cars;
- (4) emergency response procedures and equipment; and
- (5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.

The Secretary may make applicable some or all of the standards established under this subsection to cars existing at the time the regulations are prescribed, as well as to new cars, and the Secretary shall explain in the rulemaking document the basis for making such standards applicable to existing cars.

(b) **INITIAL AND FINAL**

REGULATIONS.—(1) The Secretary shall

prescribe initial regulations under subsection (a) within 3 years after the date of enactment of the Federal Railroad Safety Authorization Act of 1994. The initial regulations may exempt equipment used by tourist, historic, scenic, and excursion railroad carriers to transport passengers.

(2) The Secretary shall prescribe final regulations under subsection

(a) within 5 years after such date of enactment.

(c) **PERSONNEL.**—The Secretary may establish within the Department of Transportation 2 additional full-time equivalent positions beyond the number permitted under existing law to assist with the drafting, prescribing, and implementation of regulations under this section.

(d) **CONSULTATION.**—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act (5 U.S.C. App.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

The Secretary of Transportation has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49(m).

III. Passenger Equipment Safety Standards Working Group

Consistent with the intent of Congress that FRA consult with the railroad industry in prescribing these regulations, FRA invited various organizations to participate in a working group to focus on the issues related to railroad passenger equipment safety and assist FRA in developing Federal safety standards. The Passenger Equipment Safety Standards Working Group (or the "Working Group") first met on June 7, 1995, and has assisted FRA throughout the rulemaking process. Since its initial meeting, the Working Group has evolved so that its membership includes representatives from the following organizations:

American Association of Private
Railroad Car Owners, Inc. (AAPRCO)
American Association of State Highway
and Transportation Officials
(AASHTO)
APTA
AAR
Brotherhood of Locomotive Engineers
(BLE)
Brotherhood Railway Carmen (BRC)
FRA
Federal Transit Administration (FTA) of
DOT
National Railroad Passenger Corporation
(Amtrak)
National Association of Railroad
Passengers (NARP)

Railway Progress Institute (RPI)
Safe Travel America (STA)
Transportation Workers Union of
America (TWU)
United Transportation Union (UTU),
and
Washington State Department of
Transportation (WDOT)

The Working Group is chaired by FRA, and supported by FRA program, legal, and research staff, including technical personnel from the Volpe National Transportation Systems Center (Volpe Center) of the Research and Special Programs Administration of DOT. FRA has included vendor representatives designated by RPI as associate members of the Working Group. FRA has also included the AAPRCO as an associate Working Group member. The National Transportation Safety Board (NTSB) has designated staff members to advise the Working Group.

In developing proposed safety standards for passenger equipment operating at speeds greater than 125 mph but not exceeding 150 mph, FRA formed a subgroup (the "Tier II Equipment Subgroup") of Working Group members representing interests associated with the provision of rail passenger service at such high speeds. The full Working Group recommended the formation of a smaller subgroup to consider Tier II passenger equipment standards, as a number of Working Group members found the operation of high-speed passenger equipment to be outside their immediate interest and expertise. FRA invited representatives from organizations including Amtrak, the BLE, BRC, RPI, and UTU to participate in developing the Tier II standards.

In accordance with 49 U.S.C. 20133(d), the evolving positions of the Working Group members—as reflected in the minutes of the group's meetings and associated documentation, together with data provided by the members during their deliberations—have been placed in the public docket of this rulemaking.

IV. Proceedings to Date

On June 17, 1996, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment (61 FR 30672). The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various topics including: system safety programs and plans; passenger equipment crashworthiness;

inspection, testing, and maintenance requirements; training and qualification requirements for mechanical personnel and train crews; excursion, tourist, and private equipment; commuter equipment and operations; train make-up and operating speed; tiered safety standards; fire safety; and operating practices and procedures.

FRA's commitment to developing proposed regulations through the Working Group necessarily influenced the role and purpose of the ANPRM. FRA specifically asked that members of the Working Group not respond formally to the ANPRM. The issues and ideas presented in the ANPRM had already been placed before the Working Group, and the Working Group had commented on drafts of the ANPRM. As a result, FRA solicited the submission of written comments that might be of assistance in developing a proposed rule from interested persons not involved in the Working Group's deliberations.

FRA received 12 comments in response to the ANPRM. These comments were shared with the Working Group and were taken into consideration by the members of the group as they advised FRA during the development of a Notice of Proposed Rulemaking (NPRM). The Working Group worked intensively, and concluded with a meeting in Philadelphia on September 30-October 2, 1996. Working Group members agreed to the preparation of a NPRM reflecting partial consensus on a number of the issues in the rulemaking. However, the industry parties were unable to agree on any option with respect to inspection requirements for power brakes or daily inspection of equipment. Further, one labor organization later advised FRA that it could not participate in a consensus on less than the full range of issues in the rulemaking.

FRA prepared in draft an NPRM and shared it with the Working Group members on March 19, 1997. The NPRM was then enriched with discussions of issues and options reflecting concerns of Working Group members in response to the draft, and some changes were incorporated into the proposed rule.

On September 23, 1997, FRA published the NPRM (1997 NPRM) in the **Federal Register** to add a new part, 49 CFR part 238 (Passenger Equipment Safety Standards), and to amend 49 CFR parts 216 (Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment), 223 (Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses), 229 (Railroad Locomotive Safety Standards), 231 (Railroad Safety

Appliance Standards), and 232 (Railroad Power Brakes and Drawbars). 62 FR 49728. The proposed part 238 set forth comprehensive Federal safety standards for the safety of railroad passenger equipment, including equipment design and performance standards for passenger and crew survivability in the event of a passenger train accident, as well as inspection, testing, and maintenance standards for passenger equipment.

The 1997 NPRM generated written comments from 34 separate parties, and all of these comments may be found in the public docket of the rulemaking. The written comments included a request by the New York Department of Transportation (NYDOT) to extend the comment period for 90 days. The NYDOT sought this additional time to more thoroughly review the proposed rule, and secure expert testimony and empirical data on the proposed rule's possible impact on the high-speed intercity rail passenger program in the State of New York. FRA did not grant the request, however, particularly because FRA had planned to convene the Working Group in the interim and needed to assemble the comments on the rule for discussion within the Working Group. FRA asked the NYDOT to submit its comments by the close of the comment period on November 24, 1997, and it did so. FRA did explain to the NYDOT that it would consider comments submitted after the formal close of the comment period to the extent possible without incurring additional expense or delay in issuing the final rule, and FRA has done so.

FRA held a public hearing on the proposed rule in Washington, D.C. on November 21, 1997, at which nine parties submitted oral comments. These parties consisted of: APTA; the BRC; the BLE; Amtrak; Renfe Talgo of America, Inc. (Talgo); WDOT; NARP; the Omniglow Corporation; and The Institute of Electrical and Electronics Engineers, Inc. (IEEE). A copy of the transcript of this hearing is available in the public docket of this rulemaking.

As noted earlier, FRA convened the Passenger Equipment Safety Standards Working Group following the close of the comment period to consider the comments received in response to the 1997 NPRM and help develop the final rule. This continued the consultative process FRA has used throughout the rulemaking. Notice of the Working Group meetings was available through the FRA Docket Clerk, as stated in the NPRM, see 62 FR 49729, and the meetings were open to the public.

The Working Group met in full in Washington, D.C., on December 15-16,

1997. A smaller body of the Working Group met again on January 6, 1998, to discuss in particular high-speed passenger equipment safety issues, as well as brake inspection, testing and maintenance issues for long-distance intercity passenger trains. Minutes of these meetings, including copies of the discussion documents circulated at the meetings, are available in the public docket of the rulemaking. See 63 FR 28496; May 26, 1998. FRA received one set of written comments on the minutes of the meetings, which FRA had prepared, and these comments are also available in the same docket.

V. Discussion of Specific Comments and Conclusions

A. Application of the Final Rule to Rapid Transit Operations and "Light Rail"

In the 1997 NPRM, FRA proposed applying the rule to rapid transit operations in an urban area, unless those operations are not connected with the general system of railroad transportation. In other words, FRA made clear that its rule would apply to rapid transit operations over the general system. The Utah Transit Authority (UTA), in commenting on the NPRM, expressed concern with the inclusion of rapid transit operations, including light rail transit, in the proposed rule. The UTA stated that the rule provided no definition of what is meant by the phrase "not connected with the general railroad system of transportation." As a result, the UTA requested that the final rule provide such a definition. Further, the UTA requested that any such definition take into account rail operations that are time-separated or physically separated (using derails and electric locks), or both, so that under such circumstances rapid transit systems would not be considered connected with the general railroad system of transportation and, therefore, be excluded from the rule.

In response to the 1997 NPRM, New Jersey Transit (NJT) commented that by permitting FRA to rule on whether a transit agency may operate light rail service over a freight right-of-way, FRA's jurisdiction would be expanded in conflict with FTA's mandate in 49 C.F.R. part 659. NJT explained that the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, and 49 C.F.R. part 659 promulgated in its pursuance, required states to designate an agency of the state, other than a transit agency, to oversee and implement requirements concerning all fixed-guideway systems not under FRA's jurisdiction.

The safety jurisdictions of FRA and FTA are mutually exclusive. FTA's regulatory authority to issue regulations creating a state safety oversight program applies only to "rail fixed guideway mass transportation systems not subject to regulation by the Federal Railroad Administration." 49 U.S.C. 5330(a). Consistent with DOT Secretary of Transportation Rodney Slater's concept of One-DOT and the need to assure seamless application of intermodal transportation policies, FRA and FTA are jointly developing a proposed policy statement outlining the scope of FRA's jurisdiction over "light rail" operations that share the use of rights-of-way with conventional railroads. As discussed later in this document, the two agencies will be soliciting input from rail operators and other interested entities during the development of this policy statement.

FRA's safety jurisdiction is very broad and extends to all types of railroads except for urban rapid transit operations not connected to the general railroad system. The term "railroad" is defined by statute as follows:

In this part—

(1) "railroad"—

(A) Means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—

(i) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

49 U.S.C. 20102.

The statutory definition of the term "railroad" makes certain elements of FRA's safety jurisdiction quite clear:

- FRA, with one exception, has jurisdiction over all railroads regardless of the type of equipment they use, their connection to the general railroad system of transportation, or their status as a common carrier engaged in interstate commerce. FRA will, for example, assert jurisdiction over high-speed intercity rail service even if completely separated from the general railroad system that now exists and magnetic levitation systems that are not urban rapid transit.

- Commuter and other short-haul railroad passenger operations in a metropolitan or suburban area (except for one type of short-haul operation, *i.e.*, urban rapid transit) are railroads within

FRA's jurisdiction whether or not they are connected to the general railroad system. For operations on or over the general system, the commuter/rapid transit distinction has no jurisdictional relevance—all general system operations are within FRA's exercise of jurisdiction. Because the only urban rapid transit operations that FRA intends to cover under this rule are those on the general system, there is no need to expand on the commuter/rapid transit distinction here.

- Rapid transit operations in an urban area that **are not connected** to the general railroad system are not within FRA's jurisdiction. This is the sole exception to FRA's jurisdiction over all railroads. There is no exception for "light rail," a term not found in the statute. Although FRA could assert jurisdiction over a rapid transit operation based on any connection it has to the general railroad system, FRA believes there are certain connections that are too minimal to warrant the exercise of its jurisdiction. For example, a rapid transit system that has a switch for receiving shipments from the general system railroad is not one over which FRA would assert jurisdiction. This assumes that the switch is used only for that purpose. In that case, any entry onto the rapid transit line by the freight railroad would be for a very short distance and solely for the purpose of dropping off or picking up cars. In this situation, the rapid transit line is in the same situation as any shipper or consignee; without this sort of connection, it cannot receive goods by rail. Absent a change in policy, FRA will not attempt to apply this rule to rapid transit systems with these sorts of connections. However, if such a system is properly considered a rail fixed guideway system, FTA's rules (49 CFR 659) will apply to it.

- Rapid transit operations in an urban area that **are connected** to the general railroad system of transportation are within FRA's jurisdiction. FRA will assert jurisdiction over a rapid transit operation that is conducted on or over the general system. It does not matter that the rapid transit operation occupies the track only at times when the freight, commuter, or intercity passenger railroad that shares the track is not operating. While such time separation could, as explained in the 1997 NPRM, provide the basis for waiver of certain of FRA's rules, it does not mean that FRA will not assert jurisdiction. However, FRA will assert jurisdiction over only the portions of the rapid transit system that are conducted on the general system. For example, a rapid transit line that operates over the

general system for a portion of its length but has significant portions of street railway that are not part of the general system would be subject to FRA's rules only with respect to the general system portion. The remaining portions would not be subject to FRA's rules. If the non-general system portions of the rapid transit line are considered a "rail fixed guideway system" under 49 CFR part 659, those rules, issued by FTA, would apply to them.

As discussed above, it is the nature and location of the railroad operation, not the nature of the equipment, that determines whether FRA has jurisdiction under the safety statutes. Light rail operations that operate on the general system are always within that statutory jurisdiction. They are not within the sole statutory exception (urban rapid transit not connected to the general system) so they are railroads under the safety statutes. The greatest risk inherent in the shared use of the trackage is a collision between the light rail equipment and conventional equipment. The light rail vehicles are not designed to withstand such a collision with far heavier equipment. Were such a crash to occur with either or both equipment operating at high speeds, the consequences for passengers in the light rail vehicle(s) would likely be catastrophic.

In the past, FRA has withheld exercise of its jurisdiction with respect to light rail operations over general system trackage where there was full time separation (freight operations limited to nighttime hours). The recent proliferation of proposals for light rail operations on the general system and the issuance of this final rule establishing the first comprehensive Federal standards for railroad passenger equipment call for changing this approach. Moreover, recent developments have indicated that FRA's current approach assumes a degree of separation that is unlikely to be maintained over time. Proposals for limited overlap, deadhead movement of transit equipment, etc., have demonstrated the complexity of using common trackage for disparate purposes. Accordingly, FRA has asked that new transit starts that propose using the general rail system trackage submit appropriate waiver applications to FRA; such applications should be submitted as early as possible. As previously noted, FTA and FRA are working toward the development of a joint policy statement on the appropriate scope of FRA's jurisdiction over "light rail" that shares rights-of-way with conventional railroads. The agencies foresee an approach intended

to dovetail FRA's safety regulations with the FTA state safety oversight program where that is appropriate and FTA jurisdiction is applicable. The agencies would work together to ensure coordination of decision making. Before general implementation, the policy statement will be discussed with the affected communities of interest and may be published (together with any needed regulatory amendments) for formal comment in the **Federal Register**. At the same time this joint policy is issued, FRA plans to issue a separate proposed statement of policy that, among other things, will provide guidance on how light rail operators may seek waivers of FRA's rules. In the interim, the policy expressed in this preamble will guide FRA's actions with respect to this rule (subject to an appropriate period of consultation and adjustment with respect to the two time-separated shared use projects currently in operation).

FRA does, however, recognize that lower speed rail operations that do not operate over highway-rail grade crossings and that totally preclude the sharing of trackage between light rail equipment and conventional equipment provide an operating environment that does not require the structural standards needed for commingled passenger and freight operations. Accordingly, the final rule (in § 238.201) provides that passenger equipment, including locomotives, are not subject to the structural requirements of the rule if they are used exclusively on a rail line (A) with no public highway-rail grade crossings, (B) on which no freight operations occur at any time, (C) on which only passenger equipment of compatible design is utilized, and (D) on which trains operate at speeds no higher than 79 mph. FRA will discuss with the Working Group in Phase II of the rulemaking what structural standards are appropriate for such operations.

B. Static End Strength Requirement: Application to Existing Equipment

In § 238.203 of the 1997 NPRM, FRA generally proposed that on or after January 1, 1998, all passenger equipment shall be required to have a minimum static end strength (or "buff" or "compressive" strength) of 800,000 pounds. As some commenters recognized, FRA intended the date of January 1, 1998, to represent the effective date of the final rule. Yet, in light of the actual publication date of the 1997 NPRM, the date of January 1, 1998, appeared anachronistic, and FRA should have modified the NPRM to make its intent more explicit. A number of commenters nonetheless raised

concerns with the application of this section—whether the date were January 1, 1998, or later—since FRA proposed to apply the static end strength requirement to existing passenger equipment.

APTA recommended, in its comments on the rule, that FRA modify the proposal so that the requirement apply on or after the effective date of the final rule to passenger equipment placed in service for the first time. APTA stated that the AEM-7 locomotive and the RTG model turbo train could not meet the requirement as proposed. APTA estimated that the purchase of replacement equipment could take up to four years and would cost more than \$500 million.

Amtrak commented that the proposed requirement to have buff loading apply to the existing rail fleet is not justified based on the industry's experience. Amtrak did agree that, in order to move the industry forward on crash energy management, new equipment must be built to a uniform strength standard. Amtrak stated that it currently operates AEM-7 locomotives that do not meet the proposed requirement. In addition, Amtrak was not sure it had available the appropriate technical information on whether its fleet of Heritage equipment conformed to the proposal. At the public hearing, though, Amtrak did explain that it had no evidence that its fleet of passenger cars did not comply with the proposal. (See transcript of public hearing, pages 173–174).

The Northeast Illinois Regional Commuter Railroad Corporation (Metra), in its comments on the rule, recommended that the static end strength provision apply only to new passenger equipment orders placed on or after January 1, 1998. Metra explained that it was awaiting delivery of cars under construction, that some of the cars may be built after January 1, 1998, and that a change order would cause a series of problems.

In commenting on the 1997 NPRM, Talgo expressed concern that FRA proposed applying the static end strength requirement to existing passenger equipment in service on or after January 1, 1998. Talgo stated that this proposal would render unusable its two trainsets then in service on lease to the WDOT. Additionally, Talgo explained that it was well underway in manufacturing five new trainsets—two for the WDOT, one for Amtrak, and two others for future sale in the U.S. market—that would likewise be rendered unusable in their current form. Talgo stated that neither it nor any other manufacturer of rail equipment could have anticipated the proposed

regulation's immediate application of broad structural design changes. Citing discussions within the Working Group and the comments of other parties, Talgo asserted that other passenger equipment manufacturers and operators likewise assumed that modifications in basic structural standards would be applicable only to equipment purchased after January 1, 1999, or placed in service after January 1, 2001, and that much existing passenger equipment operating in the United States would be unable to comply with the structural requirements scheduled for early implementation. Talgo also stated that FRA did not properly identify the economic impact of its proposal on Talgo equipment. Talgo requested that FRA modify the rule so that the static end strength requirement and other structural requirements apply only to passenger equipment ordered on or after January 1, 1999, or placed in service for the first time on or after January 1, 2001.

The WDOT commented that FRA's proposal appeared to be directly targeted at the State of Washington and Amtrak's purchase of Talgo trains under manufacture. WDOT stated that imposition of the proposal in the middle of the construction process, without "grandfathering," appeared to reveal an effort to make its Talgo equipment non-compliant. WDOT recommended that the rule be modified so that the static end strength provision only apply to passenger equipment ordered after January 1, 1999. The NARP, in its comments on the proposed rule, shared WDOT's opposition to imposing the static end strength requirement on existing passenger equipment, and it recommended instead applying the requirement under a time-table similar to that proposed generally for structural requirements—*i.e.*, ordered on or after January 1, 1999, or placed in service for the first time on or after January 1, 2001. The NARP believed that the proposal could cancel WDOT's rail passenger program and thereby lead to countless, unnecessary highway deaths involving people that otherwise would have been on a WDOT passenger train.

In commenting on the 1997 NPRM, the State of Vermont Agency of Transportation (VAOT) explained that it was in the process of implementing new passenger rail service with used rail diesel cars manufactured by Budd. The cars were originally built to meet the AAR buff strength requirement, according to the VAOT, but it could not assure that the vehicles meet the standards today. The VAOT requested that the Budd cars be grandfathered because they were manufactured to AAR standards, built prior to April 1,

1956, and have a proven service record. The VAOT believed it fair for the rulemaking to grandfather these cars as being compliant at the time ordered by VAOT. Similarly, the NYDOT recommended in its comments on the proposed rule that the structural requirements apply only to new equipment, citing its intent to operate rebuilt turboliner equipment in the Empire Corridor through a cooperative effort with FRA and Amtrak. Further, the North Carolina Department of Transportation (NCDOT) expressed concern in its comments on the proposed rule that the rulemaking would require its fleet of rebuilt passenger, food service and specialty cars to undergo additional renovations and retrofitting to comply with the rule. NCDOT commented that its trainsets were designed to meet the passenger equipment safety standards in effect at the time of their order, and that the proposed regulation has the potential to thwart its rail passenger initiative.

In the final rule, FRA is retaining the 800,000-pound static end strength requirement for most new and existing passenger equipment. However, the final rule does provide that the static end strength standard and other structural standards do not apply to equipment used exclusively on a rail line (A) with no public highway-rail grade crossings, (B) on which no freight operations occur at any time, (C) on which only passenger equipment of compatible design is utilized, and (D) on which trains operate at speeds no higher than 79 mph. See § 238.201. Furthermore, the final rule creates a presumption that passenger equipment in service in the United States as of the effective date of the final rule meets the 800,000-pound static end strength requirement, unless the railroad operating the equipment knows, or FRA can show, that the equipment was not built to this 800,000-pound strength requirement. See § 238.203(b). Under this formulation, for example, Amtrak's fleet of Heritage passenger cars are presumed to comply with the static end strength requirement on the basis of Amtrak's testimony at the public hearing on the NPRM.

FRA has decided that it is in the best interest of safety to apply the buff strength requirement to existing passenger equipment and effectively regulate the use of passenger equipment not possessing at least 800,000 pounds of buff strength as specified in this rule. As noted, the operating environment in the United States requires railroad passenger equipment to operate commingled with heavy and long freight trains, often over track with frequent

grade crossings used by heavy highway equipment. FRA has serious concerns about the operation in such an environment of passenger equipment not possessing a minimum buff strength of 800,000 pounds. As a result, and in response to Talgo's and WDOT's comments on this rule, FRA cannot avoid directly addressing the current operation in the United States of the passenger trainsets manufactured by Talgo unless FRA disregards its duty to provide for the safety of rail passenger transportation. Since FRA has raised the issue of compressive strength on passenger equipment with all affected parties since well before the inception of this rulemaking, it would strain credulity to assert that a requirement for 800,000 pounds of compressive strength could truly be a matter of surprise in a rulemaking on railroad passenger equipment safety.

Making the 800,000-pound compressive strength requirement applicable to existing passenger equipment creates a bright line that will help bring needed clarity to the growing number of situations where light rail equipment is likely to be used on the general railroad system of transportation. Operation on the general system of this equipment, which is built to standards far lower than the 800,000-pound standard specified in this rule, presents enormous safety risks to the occupants of the equipment, absent imposition of strict conditions designed to virtually eliminate the risk of a light rail/conventional equipment collision. The need to address these risks as a condition of operation will be made perfectly clear by imposition of the buff strength requirement across the board. Light rail operators will have to seek a waiver of the requirement and will have to plan their operations in such a way as to maximize the likelihood of obtaining such a waiver. (A petition for grandfathering approval of the equipment could also be filed in certain cases, as discussed below.)

In regulating the use of passenger equipment not possessing a minimum buff strength of 800,000 pounds as specified in this final rule, the rule permits non-compliant passenger equipment to be continued in service for a six-month period following publication of the rule in order to permit the filing of a grandfathering petition with FRA; if a petition is filed within this six-month period, operation may continue for up to an additional six months while the petition is being processed. Grandfathering approval of non-compliant equipment is limited to usage of the equipment on a particular rail line or lines. Before grandfathered

equipment can be used on another rail line, a railroad must first file and secure approval of a grandfathering petition for such usage. See discussion under § 238.203 for the contents of the petition and the approval process. FRA will approve a petition for "grandfathering" if it complies with the requirements of § 238.203 and the proposed usage of the equipment is in the public interest and consistent with railroad safety. Amtrak and WDOT may file petitions for grandfathering approval of their Talgo-manufactured passenger equipment, in accordance with the requirements of § 238.203.

C. United States International Treaty Obligations

The United States is a party to the General Agreement on Tariffs and Trade (GATT). One of the GATT agreements is the Agreement on Technical Barriers to Trade (TBT), originally concluded in 1979 and approved by the United States Congress in the Trade Agreements Act of 1979, Pub. L. No. 96-39 (July 26, 1979). A new TBT Agreement was reached as a result of the 1994 Uruguay Round of GATT multinational trade negotiations, and subsequently approved by the United States Congress in the Uruguay Round Agreements Act, Pub. L. No. 103-465 (December 8, 1994). The TBT Agreement seeks to avoid creating unnecessary obstacles to trade, while recognizing the right of signatory countries to establish and maintain technical regulations for the protection of human, animal, and plant life or health. The TBT Agreement has been codified into law at 19 U.S.C. 2531 *et seq.*

In commenting on the NPRM, Talgo believed that a number of the proposed structural standards were inconsistent with the TBT Agreement in that domestic industry would be favored by adopting the *de facto* standards of North American passenger equipment. Talgo stated that many requirements in the proposed rule seem to have been developed exclusively with domestically-manufactured equipment in mind, "arbitrarily making compliance with the rules by other, non-U.S. manufactured equipment—such as Talgo equipment—extremely difficult." Talgo also asserted that domestic industry would be favored under the implementation schedule of the rule by noting FRA's statements in the NPRM that several of the proposed structural requirements chosen for early implementation reflect the current construction practice for North American passenger equipment. Talgo contended that the implementation

schedule disregards that, solely because imported equipment has been designed differently, it cannot satisfy the requirements at once.

FRA believes that this final rule is consistent with the United States' obligations under the TBT Agreement, and that Talgo's concerns arise, in part, from a misunderstanding of FRA's use of the term "North American passenger equipment." Article 2.1 of the TBT Agreement, cited by Talgo in its comments, states:

Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country.

A "technical regulation" refers to mandatory product standards, and FRA agrees with Talgo that the structural standards in this rule fall under this definition. See Annex 1 to the TBT Agreement, "Terms and Their Definitions for the Purpose of this Agreement, 1." However, the impact of this rule on Talgo passenger equipment, specifically its passenger cars, has nothing to do with the fact that the equipment originates in a foreign country, Spain, as opposed to the United States.

Through this rule, FRA is not favoring rail passenger cars that are domestically manufactured over those of foreign origin since, as far as FRA is aware, there is currently no domestic manufacturer of rail passenger cars in the United States. (The General Electric Company and the General Motors Corporation manufacture locomotives in the United States—not rail passenger cars; and neither entity is being favored by FRA in this rule over foreign manufacturers of locomotives.) Of course, a significant portion of the nation's rail passenger car fleet—the oldest portion—has been manufactured in the United States. Yet, over the years, manufacturers from Japan, Canada, and other countries have exported passenger cars to the United States for service on the nation's railroads. Overall, these imported rail passenger cars have possessed the same minimum structural strength as their domestic forebearers; they have been constructed to standards that are common to North American passenger equipment, *i.e.*, passenger equipment operated in North America. The five Talgo trainsets noted earlier have not been so constructed. FRA's use of the term North American passenger equipment (or United States passenger equipment, for that matter) was not intended to refer to passenger equipment manufactured in North

America in distinction to passenger equipment manufactured elsewhere.

Talgo also commented that, to a significant extent, the proposed requirements were design-based and phrased in a number of places in variables dependent on design rather than performance. In this regard, Talgo believed the proposed rule violates Article 2.8 of the TBT Agreement, which states: "Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics." Talgo asserted that the rule can and should be stated in terms of variables relating to the performance of the equipment rather than its design, and that the rule should accommodate different engineering designs, such as its articulated, lightweight trainsets.

The principal structural requirement of the final rule, which existing Talgo-manufactured passenger cars do not meet, is in fact a performance-based requirement. As further specified in § 238.203, the rule requires that new and existing passenger cars must possess a minimum static end strength of 800,000 pounds. The rule does not dictate how a passenger car must be constructed to meet this requirement, as long as the car can resist the specified 800,000-pound load. This formulation is consistent with the requirements of 19 U.S.C. 2532(3), which states:

Performance Criteria.—Each Federal agency shall, if appropriate, develop standards based on performance criteria such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to physical form of the product or the types of material of which the product is made.

(Of course, the rule does require that the body structure of a passenger car be designed, *to the maximum extent possible*, to fail by buckling or crushing, or both, of structural members when overloaded in compression rather than by fracture of structural members or failure of structural connections. See § 238.203(c). Yet, in any regard, FRA believes it unsafe to design a passenger car to fail first by fracture of structural members or failure of structural connections, as the ability of the car structure to absorb collision energy is negated.)

FRA recognizes that the five Talgo trainsets were designed to international standards that require lesser compressive strength. Talgo has pointed out that these trainsets will be configured in the same manner as two leased trainsets formerly operated in the

State of Washington. These trains are intended to be pulled by a conventional locomotive and have unoccupied units at the front and rear of the trainsets which are available to absorb initial crash energy. Talgo contends that this configuration provides equivalent protection from loss of occupied volume in a rear-end or head-on collision when compared with conventional cars which would be occupied by passengers or crew. FRA has provided a process for WDOT and others to secure grandfathering approval regarding the compressive strength requirement for passenger equipment placed in use prior to November 8, 1999, as previously noted. However, as explained below, FRA is unable to relax the minimum compressive strength requirement for passenger equipment simply on the basis of train configuration, since to do so would diminish the safety provided for the rail travelling public as a whole.

FRA believes the minimum static end strength requirement in the final rule is not inconsistent with the TBT Agreement, in that it fulfills FRA's objective of protecting human safety and only restricts the use of equipment not meeting that objective because of the performance of the equipment—not because of the origin of the equipment. In this regard, 19 U.S.C. 2531(b) provides in part:

No standards-related activity of any * * * Federal agency * * * shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic purpose including * * * the protection of legitimate health or safety * * * and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

Having a passenger car possess a minimum compressive strength of 800,000 pounds, along with other features, has evolved as a result of a long history of efforts by railroads and suppliers to learn the hard lessons taught by a difficult operating environment in the United States. Passenger train collisions and derailments may occur in a variety of different scenarios and implicate structural features of passenger equipment in similarly numerous ways. The rule cannot be applied in a general way to both (1) except any consist of passenger cars from the same compressive strength requirements applicable to all other passenger cars solely because the passenger car consist is buffered at each end by an unoccupied car and linked by articulated connections, and (2) provide

for the safety of the occupants of passenger cars.

Further, over the past few years, FRA has funded the most extensive and detailed research and analysis ever conducted by a public body in the United States concerning passenger car safety. That effort has included attention to international practice, particularly for high-speed equipment. However, given existing data and analysis, FRA is unable to specify an alternate performance standard for passenger car compressive strength that would meet FRA's safety objectives and be equally applicable to passenger cars of any design that might some day be proffered for use in the United States. Nor, so far as FRA is aware, has any government or international body achieved a similar feat. Certainly doing so within the time available to issue standards under the 1994 statutory mandate would not have been possible.

FRA notes that Talgo further commented that the early implementation dates proposed for certain structural requirements are inconsistent with Article 2.12 of the TBT Agreement in that a sufficient amount of time would not be provided for foreign producers to modify their products' design or manufacturing processes to comply with new or significantly revised regulatory requirements. Article 2.12 provides:

Except in those urgent circumstances referred to in [Article 2] paragraph 10 [of the TBT Agreement], Members shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members * * * to adapt their products or methods of production to the requirements of the importing Member.

In the final rule, the compressive strength requirement takes effect sooner than any other principal structural requirement, and it applies to both new and existing passenger cars and locomotives. If any provision of the rule were found to be inconsistent with Article 2.12 of the TBT Agreement, then, it would most likely be the compressive strength requirement. However, the United States Congress has expressly authorized applying the requirements of the final rule to existing passenger cars, provided only that the basis for doing so is explained in the rulemaking document. See Section 215 of the Federal Railroad Safety Authorization Act of 1994, above, as codified at 49 U.S.C. 20133 ("The Secretary may make applicable some or all of the standards established under this subsection [49 U.S.C. 20133(a),] to cars existing at the time the regulations are prescribed."). FRA has made the

compressive strength requirement applicable to existing passenger cars as explained in the preamble. However, through the submission of appropriate data and analysis, and approval by FRA as further specified in § 238.203, discussed below, certain passenger cars not possessing the minimum compressive strength of 800,000 pounds may operate on the general railroad system of transportation, and the rule does afford a reasonable time for that information to be gathered.

In providing the possibility that some equipment now being used which does not meet the buff strength requirement of this rule might continue to be used ("grandfathered"), FRA intends to permit only very safe operations to occur. Petitioners will need to demonstrate—through a quantitative risk assessment that incorporates design information, engineering analysis of the equipment's static end strength and of the likely performance of the equipment in derailment and collision scenarios, and risk mitigation measures to avoid the possibility of collisions or to limit the speed at which a collision might occur, or both, that will be employed in connection with the usage of the equipment on a specified rail line or lines—that use of the equipment, as utilized in the service environment for which recognition is sought, is in the public interest and is consistent with railroad safety. In this regard, FRA notes that passenger equipment not possessing the minimum static end strength specified in this rule does not have the same capacity to absorb safely within its body structure the compressive forces that develop in a collision as equipment meeting the standard. The engineering analysis submitted by the petitioner should address how these forces will be dissipated in a manner that does not jeopardize occupant safety in collision scenarios.

D. Non-Conventional Passenger Equipment

As noted above, commenters have requested that FRA specify design-neutral or performance-based requirements so that the safety of all passenger equipment may be evaluated on the same basis. In comments in this docket, Talgo has suggested substituted (and reduced) force levels that it believes are appropriate for inclusion in the final rule in lieu of those proposed for truck-to-carbody attachment and anti-climbing arrangements, for instance. As explained, FRA has specified the compressive strength requirement as fairly as we are able in consideration of the safety of the rail

travelling public. FRA has also done so with respect to the other structural requirements in the rule.

FRA recognizes that the existing Talgo trainsets presents unique challenges in terms of describing appropriate force levels in several regards. FRA understands that the Talgo trainsets are articulated, low-floor trainsets with independently rotating wheels. The car bodies are made from light-weight aluminum extrusions. In contrast, the vast majority of passenger carrying equipment used on the nations's railroads is individually suspended, has automatic couplers, has a higher floor height above the rail, has wheels fixed to an axle, and is constructed with a steel underframe made up from fabricated members. FRA has conducted, and continues to conduct, research which addresses the influence of carbody construction, suspension configuration, and coupling arrangement on the crashworthiness, derailment tendency, and other safety-related aspects of Talgo and other non-conventional equipment.

Developing safety regulations requires detailed technical knowledge of the system being regulated. At the time this rule is being written, FRA is unable to specify alternative performance-based standards with respect to the structural requirements in this rule that would meet FRA's safety objectives for passenger equipment of any design. Areas of particular technical concern with regard to the Talgo trainsets, which need to be resolved by FRA through an ongoing exchange of information, include the nature of its articulated connection and its potential to allow override in a collision, and the welding of the aluminum extrusions which make up the body shell. The Talgo tilt trainsets have characteristics that are unique, or nearly unique, that may either reduce or increase vulnerability in a derailment or collision. For instance, the articulated design of the trainset may tend to keep the train in line in the case of a derailment where the decelerations are reasonably uniform throughout the length of the train, preventing secondary impacts. On the other hand, the absence of major structural members in the floor of the passenger units could be a serious problem should the train be involved in a collision with freight train cars or lading that has fouled the track on which the passenger train is travelling, as a result of the freight train having derailed. In this regard, the absence of major structural members in the floor of the Talgo passenger units increases their vulnerability to penetration by the

trainset's trucks, should the trucks separate from the train.

Historically, the United States industry requirement for a minimum compressive strength has reinforced a pattern of passenger car construction resulting in use of stiff, quite substantial underframes that have served other practical purposes in derailments and collisions, including prevention of car body buckling, prevention of harm to passengers from failure of the floor structure and entry of debris, and resistance to penetration of the car from the side where the primary impact was at the floor level. Both with respect to compressive strength and other structural requirements that the Talgo trainset may not be able to meet, it is important to ensure that alternative means of achieving crashworthiness are just as successful as the standards described in this final rule.

Creating alternative performance-based standards for a particular type of passenger equipment requires a very early dialogue and technical information exchange. In the summer of 1995, FRA convened the first meeting of equipment manufacturers (including representatives of Canadian, European and Japanese consortia) to discuss passenger safety standards. That meeting led to designation of equipment manufacturer representatives as associate members of the Passenger Equipment Safety Standards Working Group. Although notified along with a number of other manufacturers of passenger equipment, Talgo representatives did not participate in the process. (For its part, the WDOT did not formally indicate to FRA an interest in participating in the rulemaking until after the Working Group had tentatively agreed on the structural standard proposals—FRA received a letter from the WDOT commenting on the ANPRM on September 4, 1996. However, AASHTO had participated from the beginning of the rulemaking.) Talgo did not enter the discussions directly until publication of the NPRM in September of 1997, and was still in the process of providing engineering data through October of 1998. Given the timing of this latest submission of data to FRA, approximately ten-months after the close of the public comment period on the NPRM, FRA has not had the opportunity to fully evaluate the information provided by Talgo for purposes of this rule.

FRA appreciates Talgo's recent undertakings to conform any future trainsets (beyond the five trainsets noted earlier) built for North American service to the 800,000-pound static end strength requirement and any other applicable

requirements in this rule. FRA will be pleased to work with Talgo and members of the Working Group in Phase II of the rulemaking to determine whether different performance-based regulations are appropriate. In the interim, FRA has provided a special approval process in § 238.201 for considering whether the new generation of Talgo equipment and any other passenger equipment of special construction provide an equivalent level of safety with the Tier I standards (other than the static end strength requirements) contained in the final rule. See the discussion in the section-by-section analysis of § 238.201 for an explanation of the special approval process.

E. System Safety

FRA believes that passenger railroads should carefully evaluate their operations with a view toward enhancing the safety of those operations. The importance of formal safety planning has been recognized in Emergency Order No. 20 (61 FR 6880; Feb. 22, 1996) and the rule on passenger train emergency preparedness (63 FR 24630; May 4, 1998). In furtherance of safety planning, the 1997 NPRM contained a set of system safety requirements to be applied to all intercity passenger and commuter rail equipment. See 62 FR 49760. FRA intended that each individual passenger railroad be required to develop a system safety plan and a system safety program tailored to its specific operation, including train speed. FRA explained, however, that the Working Group did not reach consensus on system safety requirements for Tier I equipment; whereas the Tier II Subgroup did reach full consensus on system safety program requirements for Tier II equipment. Strong support did exist among Working Group members to apply formal system safety planning to Tier I equipment, yet views differed as to whether system safety planning should be required by law.

In particular, the 1997 NPRM noted that APTA objected to FRA issuing any regulations governing system safety plans because commuter railroads have voluntarily agreed to adopt such safety plans. 62 FR 49734. FRA also explained its understanding that APTA's system safety approach will be more comprehensive than what FRA proposed and address each commuter railroad's system more as an integrated whole, not focused principally on rail equipment. See 62 FR 49734. FRA therefore invited comment on APTA's suggestion that commuter railroads be allowed to regulate themselves in this

area; whether FRA should mandate the contents of system safety plans; whether the areas FRA proposed to require railroads to address were appropriate; whether additional areas should be added; and to what extent FRA should propose to enforce portions of the system safety plans. FRA further asked whether the rule should require that system safety plans be comprehensive and address the entire railroad system in which the equipment operates, as well as whether the emergency preparedness planning requirements contained in the passenger train emergency preparedness rulemaking be expressly integrated with the system safety planning requirements contained in this part. *Id.* at 49733–4.

In commenting on the rulemaking, APTA believed FRA's approach to system safety short-sighted in that it would apply only to the equipment component of the commuter railroad system and therefore ignore track, signal system, other infrastructure, and operating practices components. Further, APTA questioned FRA's general focus in the system safety plan (on fire safety; software safety; inspection, testing and maintenance; training; and new equipment) prior to having a railroad identify its major safety risks through its individual system level analysis. APTA stated that it supports a true system safety approach that allows each railroad to determine its own major safety risks and addresses all the components of the passenger rail system—not just the equipment component.

As an alternative to Federal regulation, APTA proposed a system safety program based on system safety plans—developed using MIL-STD-882C as a guide—that would be submitted by its individual member railroad properties and audited by APTA. APTA explained it would invite FRA to observe the audits and the follow-up actions taken by the commuter railroads in response to the audits. APTA requested that FRA hold Federal requirements for commuter railroad system safety plans in abeyance for a 3-year probationary period—corresponding to one complete audit cycle—while FRA observes and evaluates the program.

Amtrak commented that it supports APTA's position on system safety for both Tier I and Tier II equipment. Amtrak believed it appropriate for FRA to start with a voluntary system safety approach and then, based on actual experience, follow up with specific regulations in the future. Amtrak believed FRA needs to allow the industry the time to establish the

culture and process that allows system safety to function without creating an unwarranted bureaucratic burden.

In its comments on the 1997 NPRM, Metra agreed with the value of a system safety plan, but believed that such plans should not be regulated. Metra recommended the rule contain only a top-level system safety plan requirement for railroads to identify the most serious safety risks within their specific operations, and then allow each railroad to create its own programs to reduce those risks. Metra explained that a railroad's system safety plan should project beyond current practice to continuously improve that practice and that Federal enforcement of such a plan would continually find violations because current practice would not reflect the ideals set forth in the plan. Metra believed that FRA regulation would make a system safety plan a useless tool for improving safety, as the plan would be limited to mimicking Federal regulation and describing current practice. In addition, Metra noted that a system safety plan is distinct from a document that describes current practice for routine and regulated activities. Metra proposed that this document, a safety policy, reference all current-practice safety-related procedures and require railroads to adhere to them.

Bombardier commented that the 1997 NPRM does not provide the latitude for each railroad to tailor or customize its system safety plan to its individual operations and needs. Further, Bombardier believed that the NPRM confuses the requirements for the railroad's system safety plan with those required for equipment acquisition. If FRA insists that the rule contain a requirement for a system safety plan, according to Bombardier, it should be limited to requiring each railroad to develop its own plan based on MIL-STD-882C or APTA's Manual for the Development of a System Safety Plan for Commuter Railroads. Separately, the rule should require a system safety plan specifically addressing equipment procurement.

The BRC commented that FRA must mandate the contents of system safety plans to ensure that vital topics are included in such plans. Further, the BRC believed FRA must have the power to enforce compliance with system safety plans. Otherwise, the BRC believed the plans themselves would amount to little more than suggested operating practices. The BRC also believed that FRA must review each railroad's system safety plan and approve it only if it complies with Federal regulations. Similarly, the UTU

commented that the 1997 NPRM's provisions on system safety plans is the most important section of the rule. The UTU believed FRA should continue to treat it as such and not allow it to be weakened.

The NTSB commented that it supports FRA mandating the contents of system safety plans for minimal consistency and oversight, rather than allowing the railroads to regulate themselves in this area, so that important safety elements are consistently included in each safety plan. The NTSB believed that the system safety plans should be comprehensive and address the entire railroad system in which the passenger equipment operates. The NTSB observed that if the industry does not have a comprehensive system safety plan, it may not be able to identify, track, monitor, or rectify situations that can lead to unsafe conditions. Further, the NTSB remarked that system safety should be a continuous, iterative process that has a built-in feedback mechanism and should be used throughout the program's life cycle to arrive at the best plan possible.

The NTSB noted that it has made safety recommendations urging FRA to include specific safety requirements in a system safety plan. It urged FRA to incorporate the following recommendations into FRA's general requirements for system safety plans:

Require carriers to train employees in emergency procedures to be used after an accident, to establish priorities for emergency action, and to conduct accident simulation to test the effectiveness of the program, inviting civic emergency personnel participation. (R-76-29)

Develop and validate through simulated disaster exercises a model emergency response plan for the guidance of the railroad industry in formulating individual plans to be utilized by their train crewmembers in the event of an emergency. (R-80-6)

In this regard, FRA did issue final regulations governing the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, in the passenger train emergency preparedness rulemaking. See 63 FR 24630, May 4, 1998. That rule specifically requires emergency preparedness plans to address such subjects as communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The plan adopted by each affected railroad is also subject to formal review and approval by FRA.

FRA believes the approach taken in the emergency preparedness rulemaking in requiring railroads to adopt a safety plan addressing specific topics is more appropriate than imposing a general requirement for railroads to adopt a comprehensive system safety plan. FRA believes this is consistent with the view of the commenters to mandate the contents of safety program plans for minimal consistency and oversight, so that important safety elements are included in each safety plan. At the same time, focusing the safety planning requirements and streamlining the rule will facilitate the regulated community's understanding of the rule's requirements and thereby aid in its compliance. As further specified, the final rule will require that each railroad adopt safety program plans addressing:

- Fire safety;
- Employee training and qualifications;
- Equipment inspection, testing, and maintenance;
- Pre-revenue service acceptance testing of equipment; and
- Train hardware and software safety.

In addition, more particular safety planning requirements are imposed on Tier II passenger equipment, as discussed below, reflecting both the greater risks to safety from operating the equipment at such high speeds and the importance of advanced planning in order to meet new safety challenges.

As FRA recognized in the 1997 NPRM, FRA's proposed approach to system safety focused principally on rail passenger equipment. This was not a pure system safety approach, inasmuch as FRA did not focus on safety planning for other elements of the railroad infrastructure such as the track and signal system, or for a host of items including platform safety, security and trespasser prevention.

FRA will closely monitor Tier I railroad operations in their development and adherence to voluntary, comprehensive system safety plans. FRA has already established a liaison relationship with APTA and has already begun participating in system safety plan audits on commuter railroads. FRA is using this involvement to enrich FRA's Safety Assurance and Compliance Program (SACP) efforts on these railroads—which, unlike the triennial audit process for system safety plans, is a continuous activity with frequent on-property involvement by FRA safety professionals. FRA will reconsider its decision not to impose a general requirement for system safety plans on Tier I railroad operations if the need to do so arises. FRA expects that

Tier I railroad operations will be able to integrate the specific safety planning requirements contained in this final rule into their own system safety plans, in the same way the railroads will incorporate into their plans the emergency planning requirements contained in 49 CFR part 239.

FRA is retaining more extensive safety planning requirements for Tier II railroad operations. These requirements are directed at ensuring the safety of the equipment in its operating environment and that the introduction of novel technology is thoroughly analyzed prior to procurement of the equipment. Tier II railroad operations will be operations with new characteristics that require special attention and have heightened safety risks due to the speed of the equipment. In particular, each railroad must have a safety program plan for the operation of its Tier II passenger equipment prior to placing the equipment into revenue service. In addition, each railroad must have a safety program plan for each procurement of Tier II passenger equipment or major upgrade or introduction of new technology in Tier II passenger equipment. The railroad must also receive FRA approval of a pre-revenue service acceptance testing plan, as well as FRA approval prior to placing such new or modified equipment into revenue service.

In general, however, the final rule does not require that FRA approve a railroad's safety plans required under the rule. As noted, FRA believes it best to focus its resources on Tier II passenger equipment operations due to their special circumstances. Further, FRA approval may not be necessary when, by operation of the rule, each railroad must independently comply with specific safety planning requirements or face sanction from FRA. Under 49 CFR § 238.11 of the final rule, any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty.

F. Side Exit Doors on Passenger Cars

In the 1997 NPRM, FRA generally proposed that new passenger cars have a minimum of four exterior side doors—or the functional equivalent of four such doors—each door permitting at least one 95th-percentile male to pass through at a single time. See 62 FR 49807 (§ 238.237), and 62 FR 49820 (§ 238.441). Exterior side doors are the primary means of egress from a passenger train, yet there is no Federal requirement that a passenger car be equipped with such doors. FRA does recognize that in an emergency

passengers would generally be able to move through a passenger car's end doors to seek refuge in adjacent cars. In fact, it is safer for passengers to remain on a train unless doing so in itself risks their safety, because of hazards along the railroad right-of-way such as electrified rails and other trains. However, the tragic September 22, 1993 Amtrak train derailment near Mobile, Alabama, and the February 16, 1996 collision involving MARC and Amtrak passenger trains near Silver Spring, Maryland, show that in a life-threatening situation passengers have no alternative but to exit the train. All of the 42 passenger fatalities in the Mobile, Alabama train derailment resulted from asphyxia due to drowning (NTSB Railroad-Marine Accident Report 94/01), and the deaths of at least eight of the eleven persons killed in the Silver Spring, Maryland train collision resulted from the fire that ensued (NTSB Railroad Accident Report (RAR) 97/02). FRA is not suggesting that the cars involved in those accidents lacked a sufficient number of emergency exits; nevertheless, these are examples of instances where passengers have died because they could not leave the train. (However, the NTSB did note in its investigation report of the Silver Spring, Maryland train collision that “[e]xcept for those passengers who died of blunt trauma injuries, others may have survived the accident, albeit with thermal injuries, had proper and immediate egress from the car been available.” *Id.* at page 63. The NTSB explained in its explicit findings on the collision that “the emergency egress of passengers was impeded because the passenger cars lacked readily accessible and identifiable quick-release mechanisms for the exterior doors, removable windows or kick panels in the side doors, and adequate emergency instruction signage.” *Id.* at 73.)

So that each passenger car has sufficient doorway openings to allow passengers and crewmembers to exit quickly in a life-threatening situation, FRA proposed requiring that passenger cars be equipped with side doors. Exiting a passenger train through a functioning emergency window exit is slower than exiting a train through a functioning door, and presents a risk of non-fatal injury. FRA made clear in the 1997 NPRM that the proposed side door requirement was not a recommendation of the Working Group, although FRA believed such a requirement necessary at least as an interim measure. See 62 FR 49770. FRA also recognized that existing designs of passenger cars do not always provide for four side doors, and,

in fact, the proposed requirement did not specifically require that passenger cars have four side doors. For instance, the requirement would have been met if a passenger car had two double-wide doors that permit two 95th-percentile males to pass through each such door at the same time—the functional equivalent of four side doors having openings of the same size in the aggregate. FRA invited comments concerning the extent to which existing designs of passenger cars could not comply with the proposed requirement, noting that modifications to the proposal may be necessary based on the information supplied. Further, as a long-term approach, FRA explained that it 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.

In its comments on the 1997 NPRM, APTA stated that the proposed requirement would eliminate certain types of cars as well as certain desirable car design safety features. Specifically, Amtrak would not be able to procure Viewliner cars and NJT would not be able to increase the number of Comet IV cab cars with extra structural protection for train operators, according to APTA. APTA recommended that the rule text be modified to include passenger car end doors in the calculation of the required number of door exits. APTA believed this would encourage structural changes that involve the elimination of a side door to provide additional protection to train operators and allow Amtrak to continue its Viewliner cars in service.

Amtrak, in commenting on the proposal, expressed particular concern that the proposed requirement would prevent the future construction of its Bi-Level Superliner equipment in a configuration that maximizes the equipment's economic performance. Amtrak noted that its current policy calls for equipping every window in such equipment with at least one emergency pane, and that the proposed requirement would not take that into consideration. Amtrak supported APTA's recommended modification to the rule text.

The NARP also questioned the proposed side exterior door requirement for passenger cars. The NARP noted that the most common way to exit a car in an emergency is through the car's end doors, and it suggested that emergency window exits are probably more reliable than additional doors, believing the

doors are more likely to be rendered inoperable. The NARP stated that research should focus on the relationship between a car's seating capacity and layout and its emergency-exit capacity. The NARP opposed requiring four doors on a 44-foot Talgo car, and saw little benefit from adding additional doors to a Superliner dining car without a costly stairwell installation. The NARP asserted that a requirement for four side doors may be economically fatal for a single-level dining car, and advised instead that one side door may be provided in the hallway opposite the kitchen and a second side door placed in the kitchen.

In commenting on the proposal, WDOT believed it not appropriate to require four side doors on a 44-foot Talgo passenger car, which is approximately half the length of conventional passenger cars. WDOT stated that a Talgo passenger car has two exterior doors for a maximum of 36 people in each car, while an Amtrak Horizon coach has four exterior doors and seats 72 passengers. WDOT maintained that the rule should reflect these differences or provide clear, concise performance-based standards in the alternative. In this regard, WDOT found the term "functional equivalent" as used in the rule to be vague and in need of better definition. Further, WDOT commented that, traditionally, dining and bistro cars have not had exterior side doors; and requiring such doors in these cars would significantly decrease the amount of available dining space, decrease revenue-generating space, and add substantial costs. WDOT recommended FRA remove dining and bistro cars from any exterior side door requirement as it would decrease the amount of available dining space and thereby reduce passenger convenience, comfort and satisfaction. Talgo similarly commented that the proposed requirement should be modified to state that the functional equivalent of four side doors in a car of conventional length is two side doors in a car of half the length, and that dining and bistro cars be exempted from any requirement.

In response to the proposal in the NPRM, Bombardier recommended that the wording of the rule be changed to require that each passenger car have a minimum of two side doors. Bombardier noted that on Amtrak's high-speed trainsets (HST), the passenger cars that will be positioned next to the power cars are equipped with only two exterior side doors, both of which are located on the end nearest to the power car. In the event of an evacuation, Bombardier explained that passengers could exit through those side doors as well as

through the door at the opposite end of the car. Bombardier believed the use of such end doors should be considered in determining the time needed to evacuate a passenger car, and it noted in this regard that intercity passenger cars generally carry fewer passengers than commuter cars.

Based on the comments received, FRA has decided to modify the requirement for exterior side doors on Tier I passenger cars ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002, and for any Tier II passenger car placed in service. The final rule requires that each such passenger car have a minimum of two exterior side doors, and each door must have a minimum clear opening of 30 inches horizontally by 74 inches vertically. Since the minimum number of required side doors has been reduced from that proposed in the NPRM, this provision should not hinder railroads from removing the locomotive engineer's exterior side door in cab car and MU locomotive control compartments for purposes of adding to the structural integrity of the equipment. As the BLE raised in its comments on the rule, removing this side door allows for a continuous side sill structure along the control compartment, thereby enhancing the compartment's structural integrity and reducing the risk the compartment will be crushed in a corner or side impact. A dining car or other food service car is subject to the side door requirement as a passenger car under this rule, since FRA believes that all passenger cars must have exterior side doorway openings to allow for passenger and crew escape in a life-threatening situation, and also permit emergency rescue access.

Unlike the proposed rule, FRA has specified the dimensions of the doorway opening in inches rather than retain the language referencing a 95th-percentile adult male. This modification clarifies the rule for the regulated community in that what constituted a 95th-percentile adult male was originally not defined. FRA believes that a doorway with a minimum clear opening of 30 inches horizontally by 74 inches vertically will provide passage for a large, fully-clothed person and accommodate emergency response personnel equipped with fire and rescue gear. For instance, see the discussion below of § 238.113 (Emergency window exits) for detail on the sizes of adult backboards used by emergency responders to evacuate injured persons. FRA has specified the vertical dimension of 74 inches based on the height of the 95th-percentile adult male (72.8 inches) stated in Table

2 of Public Health Service Publication No. 1000, Series 11, No. 8, "Weight, Height, and Selected Body Dimensions of Adults," June 1965. (A copy of this document has been placed in the public docket for this rulemaking.) The stated height of 72.8 inches was recorded for adult males not wearing shoes, and FRA has adjusted for this. FRA did not find this Public Health Service Publication that useful for purposes of specifying a horizontal dimension of the doorway as the stated body dimensions were, in effect, recorded without clothing (see page 5)—and of course did not address the size of equipment carried by emergency response personnel. FRA notes that the Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles also contain requirements for doorway width clearance (See 49 CFR part 38). These ADA requirements apply by their own force independent of the requirements of this rule.

Further, unlike the proposed rule, the final rule no longer provides that a passenger car may have the functional equivalent of the specified number of side doors. Each passenger car must have at least two separate, exterior side doorway openings. This will increase the likelihood that at least one of a passenger car's side doorway openings will allow passage in the event a train collision or derailment results in either, or both, structural damage to—or blockage of—the door. In this regard, railroads should consider where the passenger car side doors are located so as to facilitate passenger and crew escape in a life-threatening situation.

FRA reemphasizes that this requirement is only an interim measure that will prevent passenger cars from being introduced into service without side exterior doors. In Phase II of the rulemaking, FRA will focus on formulating a systems approach to emergency egress that provides for a sufficient number of emergency exits to evacuate the maximum passenger car load in a specified time for various types of emergency situations. FRA will evaluate with the Working Group whether APTA's recommended approach to emergency egress under development in APTA's PRESS Task Force should be incorporated into the Phase II rulemaking.

G. Fuel Tank Standards

Locomotive diesel fuel tanks are vulnerable to damage from collisions, derailments, and debris on the roadbed due to their location on the underframe and between the trucks of locomotives. Damage to the tank frequently results in spilled fuel, creating the safety problem

of an increased risk of fire and the environmental problem of cleanup and restoration of the spill site. Although 49 CFR 229.71 does require a minimum clearance of 2.5 inches between the top of the rail and the lowest point on a part or appliance of a locomotive, such as a fuel tank, FRA regulations do not address the safety of fuel tanks in particular.

In 1992, the NTSB issued a report identifying concerns regarding safety problems caused by diesel fuel spills from ruptured or punctured locomotive fuel tanks. Entitled "Locomotive Fuel Tank Integrity Safety Study," the NTSB report cited in particular a collision involving an Amtrak train and an MBTA commuter train on December 12, 1990, as both trains were entering a station in Boston, Massachusetts. (NTSB Safety Study-92/04.) Fuel spilled from a tank which had separated from an Amtrak locomotive during the collision. The fuel ignited. Smoke and fumes from the burning diesel fuel filled the tunnel, increasing the hazard level in the post-crash phase of the accident, and hindering emergency response activity. As a result of the safety study, the NTSB made several safety recommendations to FRA, including in particular that FRA:

Conduct, in conjunction with the Association of American Railroads, General Electric, and the Electro-Motive Division of General Motors, research to determine if the locomotive fuel tank can be improved to withstand forces encountered in the more severe locomotive derailment accidents or if fuel containment can be improved to reduce the rate of fuel leakage and fuel ignition. Consideration should be given to crash or simulated testing and evaluation of recent and proposed design modifications to the locomotive fuel tank, including increasing the structural strength of end and side wall plates, raising the tank higher above the rail, and using internal tank bladders and foam inserts. (Class II, Priority Action) (R-92-10)

Establish, if warranted, minimum performance standards for locomotive fuel tanks based on the research called for in recommendation R-92-10. (Class III, Longer Term Action) (R-92-11)

The NTSB reiterated Safety Recommendation R-92-10 in a letter to FRA dated August 28, 1997, conveying the NTSB's final safety recommendations arising from the February 16, 1996, collision between a MARC commuter train and an Amtrak passenger train. During the collision, the fuel tank on the lead Amtrak locomotive ruptured catastrophically. The fuel sprayed into the exposed interior of the MARC cab control car and ignited, engulfing the car. (Letter at 12.)

As explained in FRA's report to Congress on locomotive crashworthiness and working

conditions, FRA believes that fuel tank design has a direct impact on safety. Minimum performance standards for locomotive fuel tanks should be included in Federal safety regulations. Accordingly, FRA proposed in the 1997 NPRM that AAR Recommended Practice No. 506 (RP-506), *Performance Requirements for Diesel-Electric Locomotive Fuel Tanks*, be incorporated into the rule as the external fuel tank requirements for Tier I passenger locomotives. FRA believes that RP-506 represents a good, interim safety standard for Tier I passenger locomotives. In the final rule, FRA has restated the requirements of RP-506 as Appendix D to part 238, as explained below, and has thereby incorporated it into the final rule.

FRA does note that further study may yield additional safety improvements for locomotive fuel tank design, and in September of 1997 FRA convened a Locomotive Crashworthiness Working Group of the Railroad Safety Advisory Committee (RSAC) to develop standards regarding a broad range of crashworthiness issues for both passenger and freight locomotives, including fuel tanks. Freight locomotive fuel tanks can cause a risk to passengers in the event of a train-to-train collision involving a passenger and a freight train. Therefore, in addition to the economy that can be achieved from standard fuel tank design requirements for the entire industry, industry-wide design requirements benefit both public and employee safety. Based on currently available information through the Locomotive Crashworthiness Working Group, it appears that locomotives built with AAR RP-506-compliant fuel tanks are performing well in derailments and highway-rail crossing collisions.

In its comments on the proposed rule, the NTSB agreed that external fuel tanks on Tier I locomotives should incorporate at a minimum, and on an interim basis, RP-506. Yet, the NTSB believed that more demanding safety standards for passenger locomotives be included in the permanent Tier I fuel tank regulations, specifically: higher ground clearance, compartmentalization, and a bottom skid plate. The NTSB noted that the advantages of higher fuel tank ground clearance were shown in Amtrak derailments in Kingman, Arizona, and Garden City, Georgia. According to the NTSB, investigation of both accidents revealed that essentially no fuel loss occurred in the involved locomotive units (GE Models P40 and P42), despite a substantial accumulation of debris beneath the fuel tanks that may have otherwise damaged current,

conventional frame-suspended fuel tanks. The NTSB attributed the maintenance of fuel tank integrity to higher than typical fuel tank ground clearance, not found in conventionally designed, frame-suspended fuel tanks. Accordingly, the NTSB specifically recommended that fuel tank regulations should require higher ground clearance for both Tier I and Tier II operations. In light of the strong potential safety benefits associated with higher locomotive fuel tank ground clearance, FRA will carefully consider with the Working Group how best to implement the NTSB's recommendation in Phase II of this rulemaking.

In addition, FRA invited comments whether the proposed rule should require that locomotive fuel tanks be compartmentalized. The Working Group specifically discussed requiring whether the interior of fuel tanks be divided into a minimum of four separate compartments so that a penetration in the exterior skin of any one compartment results in loss of fuel only from that compartment. The Working Group recommended that such a requirement be addressed in the second phase of the rulemaking, to allow for additional research to remedy fuel feeding disruptions that may result from the compartmentalization of fuel tanks. Commenters were therefore requested to provide the results of specific research and operating experience showing how compartmentalization can be practically accomplished. Commenters were also asked to explain why the issue of compartmentalization should or should not be addressed in the final rule of this first phase of the rulemaking.

The NTSB commented that it supported continued research for fuel tank compartmentalization to remedy fuel loss during derailments. It stated that compartmentalization is required in aviation applications, where fuel tanks within the airframe contour must be able to resist rupture and retain fuel under inertial forces prescribed for emergency landing conditions (citing 14 CFR 25.963). Therefore, research should be conducted to determine if similar successes can be attained in railroad application, according to the NTSB. The BLE also commented that it supports requirements for compartmentalized fuel tanks on all passenger locomotives. Noting that diesel fires create devastating results in passenger train accidents, the BLE believed every effort should be made to avoid them, including using the most advanced technology possible. Further, APTA commented that it believes fuel tank compartmentalization has the potential to reduce the amount of fuel

spilled in a railroad accident; recommended that FRA consider requiring compartmentalized fuel tanks on new locomotives if the technical difficulties resulting in interruptions in fuel flow are resolved; and suggested that FRA make a priority to resolve these technical difficulties. In accordance with these comments, FRA will carefully consider with the Working Group in Phase II of the rulemaking a requirement to compartmentalize fuel tanks on new locomotives, drawing upon research conducted and experience gained in the interim through the Locomotive Crashworthiness Working Group and the APTA PRESS Task Force.

H. Train Interior Safety

Based on previous research results, the interior passenger protection requirements for Tier I and II passenger equipment rely on "compartmentalization" as a passenger protection strategy. Such a strategy has the advantages of being passive, *i.e.*, requiring no action to be taken on the part of the occupants, of being effective for a range of occupant sizes, and potentially being effective in a wide range of interior configurations. Research results indicate that during a collision the interior environment of a passenger coach car is substantially less hostile than the interiors of automobiles and aircraft. Owing to this lower hostility in a collision environment, the interior of a typical passenger coach car can provide a level of protection to passengers without active restraints at least as effective in preventing fatality as that protection afforded to automobile and transport aircraft passengers with active restraints. See the discussion on train interior safety in the NPRM for more detail. 62 FR 49745-49749.

Conclusions from the research previously conducted on passenger protection in train collisions show that lap belts and shoulder restraints, if used, provide the highest level of occupant protection of those protection strategies studied—greater than the level of protection afforded by compartmentalization. However, as noted in the NPRM, FRA believes that more research is necessary to determine the feasibility and effectiveness of these active restraints, as well as the impact on seat design and strength necessary to support the loads associated with use of the restraints. In this regard, FRA requested information and comment from interested parties whether there is any existing research or experience which would justify active seat restraints in this phase of the rulemaking. See 62 FR 49745.

In comments on the NPRM, Simula Technologies, Inc., (Simula) stated that there may be a potential for a higher level of occupant protection offered by passive or active restraints than by compartmentalization. Simula noted that cost effectiveness considerations differ when considering the application of occupant protection strategies to a train crew as compared to passengers. For instance, it believed that the relatively high expense of passive restraints may be justified for one or two crewmembers in a particularly severe environment—for instance, a locomotive cab. Simula agreed with FRA that more research is needed to determine the most cost effective means of providing occupant safety improvements.

APTA, in its comments on the NPRM, believed that FRA has taken the correct approach in not mandating active seat restraints in this stage of the rulemaking. APTA found accurate the description of the physics of passenger motion during a collision which was contained in the preamble of the NPRM. APTA noted that active seat restraints provide the most benefit in high passenger deceleration situations, such as in automobile collisions; whereas, in the case of the low decelerations of passenger train collisions, other types of protection measures such as compartmentalization to minimize the distance a passenger travels before striking an interior surface and padding of interior surfaces can be as effective as active seat restraints in protecting passengers from secondary collisions.

In its comments on the NPRM, the BRC stated that, ideally, passenger equipment should have seat belts or other restraints to keep occupants from striking seats from behind or striking other interior surfaces and occupants. The BRC believed this to be a true cause of serious injury and death during rapid decelerations in collisions and derailments. The BRC further commented that a seat must be strong enough to hold an occupant utilizing such restraints and yet resist the force(s) of other unrestrained occupants striking the seat. In addition, a member of the public commented that Amtrak should provide its passengers with lap belts and shoulder harnesses, noting that they can reduce injuries to all occupants when used.

FRA has continued to pursue research into implementing seat belts and shoulder restraints in intercity and commuter passenger equipment. The purpose of this research is to develop the information required by FRA to determine if occupant restraints should be required in future regulations. This

research is being conducted in three steps: preliminary design studies; design development; and engineering modeling, construction, and testing. The first step of the research has been completed. Principal conclusions from the research to date are that an existing inter-city passenger coach seat can be modified to accept lap and shoulder belts. In particular, for Amtrak's traditional seat design, appropriate modification of the connections between the seat and floor, and between the seat pan and seat back, allow it to support the loads associated with two restrained 95th-percentile adult males occupying the seats as well as the loads associated with being struck from behind by two 95th-percentile adult males. Such seats can be designed to compartmentalize safely an unrestrained single 5th-percentile adult female striking the seat from behind.

Existing three-position commuter seat designs cannot be modified to accept lap and shoulder belts. The additional loads associated with the third restrained and the third unrestrained occupant cause multiple structural failures for existing three-position commuter seat designs—these designs simply fold up under the load. In order to meet weight requirements, advanced structural materials and fabrication techniques are likely to be required to develop a three-position commuter seat design which can support the loads associated with three restrained 95th-percentile adult males in the seats and the loads associated with being struck from behind the seats by three 95th-percentile adult males.

For the intercity passenger coach seat, FRA currently plans to complete work on the details of the necessary modifications to Amtrak's traditional seat design, modify accordingly four to six pairs of seats for testing, and then dynamically sled test these seats. For the commuter seat, a study is planned to develop an engineering model design of a three-position commuter car passenger seat which incorporates lap and shoulder belts. Composite structures and advanced manufacturing techniques will be considered in this study. Principal design considerations include the need to address secondary collision loads, as well as manufacturing and maintenance costs, weight, and durability.

In the second phase of the rulemaking, FRA and the Working Group will reevaluate the feasibility and effectiveness of requiring active restraints such as lap belts and shoulder harnesses in passenger equipment, based on the results of the ongoing research.

I. Fire Safety

In 1984, FRA published guidelines recommending test 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. See 49 FR 33076, Aug. 20, 1984; 49 FR 44582, Nov. 7, 1984. The guidelines were originally developed by the Volpe Center for the Urban Mass Transit Administration (UMTA now FTA) of DOT in the late 1970s, and were intended for application to rail transit vehicles. See 47 FR 53559, Nov. 26, 1982; 49 FR 32482, Aug. 14, 1984. FRA recommended applying the guidelines to intercity and commuter rail cars, due to the similarity of use for many of the materials in these cars.

The intent of the guidelines is to prevent fire ignition and to maximize the time available for passenger evacuation if fire does occur. FRA later reissued the guidelines in 1989 to update the recommended test methods. See 54 FR 1837, Jan. 17, 1989. Test methods cited in the FRA guidelines include those of the American Society for 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 ANPRM on the need for more thorough guidelines or Federal regulations concerning fire safety. See 61 FR 30696. 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. Fire Cause Analysis also responded that, at a minimum, more in depth guidelines based on current system safety procedures and available fire safety engineering techniques are needed. The commenter noted in particular that Federal maintenance standards related to fire safety are necessary to ensure that materials carefully qualified for use in rail passenger vehicles because of their fire safety characteristics are not replaced with either substandard materials or materials whose origin and fire performance cannot be determined.

The 1997 NPRM addressed fire safety by proposing to make FRA's fire safety guidelines mandatory for the construction of new passenger equipment as well as the refurbishing of existing equipment. See 62 FR 49803. As explained below in the discussion of this final rule, FRA has simplified and revised the table of tests and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs. In addition, FRA has clarified in the final rule the application of the required tests and performance criteria. As proposed in the NPRM, the final rule also furthers fire safety through a fire protection plan and program to be carried out by each operating railroad, which will include conducting a fire safety analysis of existing passenger equipment and taking appropriate action to reduce the risk of personal injuries.

As noted in the NPRM, the National Institute of Standards and Technology (NIST) of the United States Department of Commerce is conducting research under the direction of FRA and the Volpe Center involving the fire safety of rail passenger vehicles. The NIST project is investigating the use of alternative fire testing methods and computer hazard analysis models to identify and evaluate approaches to passenger train fire safety. The evaluation is examining the effects and tradeoffs of passenger car and system design (including materials), fire detection and suppression systems, and passenger egress time. A peer review committee has been established to provide project guidance and review interim results and reports. The committee includes representatives from FRA, the Volpe Center, the NFPA, builders of rail passenger vehicles, producers of materials, Amtrak and commuter railroads, and testing laboratories.

In the first phase of the NIST project, selected materials which satisfy the testing methods referenced in FRA's fire safety guidelines were evaluated using the ASTM E1354 Cone Calorimeter.¹ The Cone Calorimeter provides a measurement of heat release rate (the amount of energy that a material produces while burning), specimen mass loss, smoke production, and combustion gases. For a given confined space such as a rail car interior, the air temperature and risk of harm to passengers are increased as the heat

release rate increases. As a result, even if passengers do not come in direct contact with a fire, they may likely be injured from the high temperatures, high heat fluxes, and large amounts of toxic gases emitted by materials involved in the fire. The results of the Phase I tests showed a strong correlation between the FRA-cited test data and the Cone Calorimeter test data.

Phase I test data were used in the second phase of the NIST project to perform a fire hazard analysis of selected passenger train fire scenarios. Also included in this analysis were data obtained from tests of larger interior components, including seat assemblies, using the ASTM E 1537 Furniture Calorimeter. The analysis employed computer modeling to assess the impact on passenger train fire safety for a range of construction materials and system design. The interim report documenting Phase II is in final preparation by NIST. In the final phase of the project, selected real-scale proof tests using an Amfleet coach rail car and interior assemblies will be performed to verify the small-scale (bench-scale) criteria and hazard analysis studies in actual end use configurations.

Overall, the NIST research effort follows upon FRA-sponsored studies by the National Bureau of Standards in 1984 and NIST in 1993 which noted, among their findings, that the performance of individual components of a rail passenger car in a real-world fire environment may be different from that experienced in bench-scale tests due to vehicle geometry and materials interaction.² The results of the NIST research project will help in developing a broad set of performance criteria for materials using the Cone Calorimeter and the Furniture Calorimeter in a context similar to that provided generally in the table of FRA fire safety requirements contained in Appendix B to part 238. In addition, unlike data derived from most test methods referenced in Appendix B, heat release rate and other measurements obtained from the Cone Calorimeter and the Furniture Calorimeter can be used in a fire modeling methodology to evaluate the contribution of materials to the overall fire safety of a passenger train. Although FRA has targeted for consideration in the second phase of the

¹ "Fire Safety of Passenger Trains: Phase I Material Evaluation (Cone Calorimeter)." (DOT/FRA/ORD/-98/01-DOT-VNTSC-FRA-98-2, January, 1999). A copy of the report has also been placed in the public docket of this rulemaking.

² "Fire Tests of Amtrak Passenger Rail Vehicle Interiors." (NBS Technical Note 1193, May 1984); "Fire Safety of Passenger Trains: A Review of U.S. and Foreign Approaches." (DOT/FRA/ORD-93/23-DOT-VNTSC-FRA-93-26, December, 1993). The 1993 report is available to the public through the National Technical Information Service, Springfield, VA 22161. A copy of both reports have been placed in the public docket for this rulemaking.

rulemaking a broad set of performance criteria employing the Cone Calorimeter and Furniture Calorimeter for materials used in passenger cars and locomotive cabs, FRA has introduced use of the Cone Calorimeter and Furniture Calorimeter in a limited manner in this final rule as explained below in the discussion of Appendix B to part 238.

FRA notes that the ASTM has developed a standard which describes how to evaluate fire hazard assessment techniques (ASTM E 1546, Guide for the Development of Fire Hazard Assessment Standards). An ASTM group, the E-5.17 Subcommittee on Transportation, is currently completing a document entitled "Standard Guide for Fire Hazard Assessment of Rail Passenger Vehicles." The proposed guide is intended to provide an alternative approach to ensuring an equivalent level of fire safety using a performance-based approach which examines fire scenarios, as well as design considerations, to evaluate the potential fire hazard of a rail transportation vehicle. One of the principal issues related to the proposed guide is that calculation methods are suggested which use models that have not been validated for application to rail cars. In this regard, the results of the NIST fire safety research will be helpful for the ASTM subcommittee, as NIST is using the Hazard I computer model to develop correlations between small-scale tests of materials and full-scale tests of rail cars.

In the NPRM, FRA explained that the NFPA publishes a standard (NFPA 130) covering fire protection requirements for fixed guideway transit systems and for life safety from fire in transit stations, trainways, vehicles, and outdoor maintenance and storage areas. See 62 FR 49744-5. (A copy of the 1997 edition of this standard has been placed in the public docket for this rulemaking.) However, this standard has not historically been applied to passenger railroad systems, including those that provide commuter service (NFPA 130 1-1.2). FRA noted that an APTA representative on the Working Group who is a member of the NFPA initiated an NFPA-sponsored task force to revise the scope of NFPA 130 to cover all rail passenger transportation systems, including intercity and commuter rail, and revise other provisions as necessary. The NFPA task force met several times in 1997 and 1998, and submitted recommended revisions to the NFPA 130 Committee in August, 1998. Although the NFPA 130 Committee accepted the task force recommendations in principle, the standard revision approval process will not be complete until late 1999.

In its comments on the NPRM, the NFPA urged FRA to adopt NFPA 130 upon completion of its revision. The NFPA cited the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, and one of its provisions which requires, in general, that Federal agencies "use technical standards that are developed or adopted by voluntary consensus standards bodies" (Section 12, paragraph (d)(1)). In the second phase of this rulemaking, FRA will consider with the Working Group the incorporation of NFPA 130, as revised, into this rule.

In response to the NPRM, FRA received a number of other comments on the provisions of the rule related to fire safety. Those comments on the proposed fire protection plan and program are noted in particular, below, in the discussion of 49 C.F.R. § 238.103 in the final rule. In regard to the proposed table of tests and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs contained in Appendix B to part 238, Fire Cause Analysis commented on the advisability of making such tests and performance criteria mandatory without considerable and detailed enabling language. Fire Cause Analysis noted in particular that the table of tests and performance criteria in Appendix B contained confusing and overlapping component and function categories for materials; that application of the tests and performance criteria to "small parts" requires special consideration to provide flexibility for car builders; and that the fire performance of electrical wiring and cable was not expressly addressed in the NPRM, although addressed by NFPA 130.

A member of the public commented that he considered FRA's fire safety guidelines good in some but not all respects. The commenter stated in particular that the current acceptance levels of smoke emission are inadequate to protect passengers from toxic levels of smoke; and that permitting glazing and lighting lenses to have a flame spread index of 100 with flaming running and flaming dripping is not justified based on the location of these objects, ease of ignition, and Btu content of polycarbonate. Nonetheless, the commenter recommended adoption of the guidelines into law, noting that some vendors, car builders, and agencies operating rail equipment have not taken the guidelines seriously. Otherwise, the commenter believed that the fire safety guidelines will be discounted.

APTA, in its comments on the NPRM, supported the proposed materials

selection criteria for new equipment (as well as the proposed fire safety program for new equipment discussed below). APTA also recommended that FRA consider updating the fire safety standards based on the work of the NFPA 130 task force and the research being conducted by the NIST. The BRC, in its comments on the NPRM, stated that interior materials in passenger equipment must be required to meet strict standards for flammability and smoke emission. The BRC believed that compliance with the current guidelines alone is insufficient for safety, and that additional technology, preventative measures, and fire safety standards must be considered.

In the final rule, FRA has not significantly changed the table of test methods and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs, as contained in Appendix B to part 238. FRA has sought to maintain the current high levels of safety provided by the fire safety guidelines, while developing a more workable framework for their use as a regulation. In fact, as part of the NIST fire safety research, specific input on the 1989 FRA fire safety guidelines was solicited from rail system operators, car builders, and consultants at a workshop held at the NIST Building and Fire Research Lab (BFRL) in July, 1997. (The minutes of that workshop are contained in Follow-Up Workshop Notes.³) This input was used to help simplify and revise the table of tests and performance criteria contained in Appendix B. In summary, the specific changes FRA has made to the table in the final rule include:

- Reorganizing table component and function categories;
- Adding a dynamic testing requirement for cushions;
- Adding a new test method for evaluating seat assemblies;
- Providing a test exception and test alternative for small component parts;
- Adding express requirements for wire and cable testing;
- Updating test methods for elastomers;
- Providing an alternative test method for smoke generation;
- Adding express requirements for structural assemblies other than floors; and
- Renumbering and adding notes to the table to reflect the changes.

³ "Follow-Up Notes: NIST/CFR FRA Project, Meeting/Workshop of 7/23/97." September 15, 1997. Prepared by J. Zicherman. A copy of this document has been placed in the public docket for this rulemaking.

The discussion of Appendix B to part 238, below, provides a detailed explanation of the changes made to the table of test methods and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs.

VI. Inspection and Testing of Brake Systems and Mechanical Components

A. Background Prior to 1997 NPRM

In 1992, Congress amended the Federal rail safety laws by adding certain statutory mandates related to power brake safety. These amendments specifically address the revision of the power brake regulations and state in pertinent part:

(r) POWER BRAKE SAFETY.—(1) The Secretary shall conduct a review of the Department of Transportation's rules with respect to railroad power brakes, and not later than December 31, 1993, shall revise such rules based on such safety data as may be presented during that review.

* * * * *

Pub. L. No. 102-365, § 7; codified at 49 U.S.C. 20141, superseding 45 U.S.C. 431(r).

In response to the statutory mandate, various recommendations to improve power brake safety, and due to its own determination that the power brake regulations were in need of revision, FRA published an ANPRM on December 31, 1992, concerning railroad power brake safety. See 57 FR 62546. The ANPRM provided background information and presented questions on various subjects related to intercity passenger and commuter train operations, including: training of testing and inspection personnel; electronic braking systems; cleaning, oiling, testing, and stenciling (COT&S) requirements; performance of brake inspections; and high speed passenger train brakes. Following publication of the ANPRM, FRA conducted a series of public workshops. The ANPRM and the public workshops were intended as fact-finding tools to elicit views of those persons outside FRA charged with ensuring compliance with the power brake regulations on a day-to-day basis.

Furthermore, on July 26, 1993, the NTSB made the following recommendation to FRA: "Amend the power brake regulations, 49 Code of Federal Regulations 232.12, to provide appropriate guidelines for inspecting brake equipment on modern passenger cars." (R-93-16). The recommendation arose out of the NTSB's investigation of the December 17, 1991, derailment of an Amtrak passenger train in Palatka, Florida. The derailed equipment struck

two homes and blocked a street north of the Palatka station. The derailment resulted in eleven passengers sustaining serious injuries and 41 others receiving minor injuries. In addition, five members of the operating crew and four onboard service personnel received minor injuries. By letter dated September 16, 1993, FRA told the NTSB that it was in the process of reviewing and rewriting the power brake regulations and would consider the NTSB's recommendation during the process.

Based on comments and information received, FRA published a Notice of Proposed Rulemaking in 1994 (1994 NPRM) regarding revision of the power brake regulations. The 1994 NPRM contained specific requirements related to intercity passenger and commuter train operations, including: general design requirements; movement of defective equipment; employee qualifications; inspection and testing of brake systems and mechanical components; single car testing requirements and periodic maintenance; operating requirements; and requirements for the introduction of new train brake system technology. See 59 FR 47676, 47722-53, September, 16, 1994. Following publication of the 1994 NPRM, FRA held a series of public hearings in 1994 to allow interested parties the opportunity to comment on specific issues addressed in the 1994 NPRM. Due to the strong objections raised by a large number of commenters, FRA announced by notice published on January 17, 1995, that it would defer action on the 1994 NPRM and permit the submission of additional comments prior to making a determination as to how it would proceed in this matter. See 60 FR 3375.

After review of all the comments submitted, FRA determined that in order to limit the number of issues to be examined and developed in any one proceeding it would proceed with the revision of the power brake regulations via three separate processes. In light of the testimony and comments received on the 1994 NPRM, emphasizing the differences between passenger and freight operations and the brake and mechanical equipment utilized by the two, FRA decided to separate passenger equipment power brake and mechanical standards from freight equipment power brake standards.

As passenger equipment power brake and mechanical standards are a logical subset of passenger equipment safety standards (see 49 U.S.C. 20133(c)), FRA requested the Passenger Equipment Safety Standards Working Group to assist FRA in developing appropriate

power brake and mechanical standards for passenger equipment. The 1997 NPRM, upon which this final rule is based, was developed by FRA in consultation with this Working Group.

In addition, FRA determined that a second NPRM covering freight equipment power brake standards would be developed with the assistance of FRA's RSAC. See 61 FR 29164, June 7, 1996. Furthermore, in the interest of public safety and due to statutory as well as internal commitments, FRA determined that it would separate the issues related to two-way end-of-train-telemetry devices from both the passenger and freight issues. FRA convened a public regulatory conference and published a final rule on two-way end-of-train devices on January 2, 1997. See 62 FR 278.

Beginning in December of 1995, the Passenger Equipment Safety Standards Working Group adopted the additional task of attempting to develop power brake and mechanical inspection and maintenance standards applicable to intercity passenger and commuter train operations and equipment. The Working Group met on four separate occasions, for a total of ten days of meetings, with a good portion of these meetings being devoted to discussion of power brake and mechanical inspection and maintenance issues. From the outset, a majority of the members, as well as FRA, believed that any requirements developed by the group regarding the inspection and testing of the brake and mechanical equipment should not vary significantly from the current requirements and should be consistent with current industry practice.

FRA's accident/incident data related to intercity passenger and commuter train operations support the assumption that the current practices of these operations in the area of power brake inspection, testing, and maintenance are for the most part sufficient to ensure the safety of the public. Between January 1, 1990 and October 31, 1996, there were only five brake related accidents involving commuter and intercity passenger railroad equipment. No casualties resulted from any of these accidents and the total damage to railroad equipment totaled approximately \$650,000, or \$96,000 annually. In addition, between January 1, 1995 and October 31, 1996, FRA inspected approximately 13,000 commuter and intercity passenger rail units for compliance with 49 CFR part 232. The defect ratio for these units during this period was approximately 0.8 percent. Furthermore, during this same period FRA inspected approximately 6,300 locomotives for

compliance with 49 CFR part 229. The brake defect ratio for these units was approximately 4.65 percent.

Consequently, the defect ratio for brake related defects on locomotives and other passenger equipment during this period was approximately 2.08 percent.

The existing regulations covering the inspection and testing of the braking systems on passenger trains are contained in 49 CFR part 232. The current regulations do provide some requirements relevant to passenger train operations, including: initial terminal inspection and testing, intermediate inspections, running tests, and general maintenance requirements. See 49 CFR 232.12, 232.13(a), 232.16, and 232.17. However, most of the existing regulations are written to address freight train operations and do not sufficiently address the unique operating environment of commuter and intercity passenger train operations or the equipment currently being used in those operations. Therefore, it has been necessary for FRA to provide interpretations of some of the current regulations in order to address these unique concerns.

Currently, all non-MU (multiple unit) commuter trains that do not remain connected to a source of compressed air overnight and all MU commuter trains equipped with RT-5 or similar brake systems must receive an initial terminal inspection of the brake system pursuant to § 232.12(c)-(j) prior to the train's first departure on any given calendar day. All non-MU commuter trains that remain connected to a source of compressed air over-night are permitted to receive an initial terminal inspection of the brake system sometime during each 24-hour period in which they are used. Furthermore, all intercity passenger trains must receive an initial terminal inspection of the brake system at the point where they are originally made up and must receive an intermediate inspection in accordance with § 232.12(b) every 1,000 miles.

There are currently no regulations which specifically require the inspection of the mechanical components on passenger equipment. Although the current regulations do not contain any mechanical inspection requirement of passenger equipment, virtually every passenger railroad currently performs some type of daily mechanical inspection on its passenger equipment with highly qualified personnel. For several years Amtrak has been conducting voluntary mechanical safety inspections of passenger train components.

As noted previously, most of the members of the Working Group believed

that any requirements developed by the group regarding the inspection, testing, and maintenance of the brake and mechanical equipment should not vary significantly from the current requirements and should be consistent with current industry practice. However, the Working Group was unable to reach consensus on any power brake or mechanical equipment standards, despite the positing of multiple alternatives, use of a facilitator, and the foundation provided by the 1994 NPRM. The Working Group identified and discussed options with which the agency and labor can agree, and others with which FRA and the railroads can agree. However, bridging the gap between those various options proved elusive. Consequently, as the Working Group could not reach any type of consensus on the inspection and testing requirements, it was determined that FRA would address these issues unilaterally, based on the information and discussions provided by the Working Group and the information gathered from the 1994 NPRM.

B. 1997 NPRM on Passenger Safety Equipment Standards

During the Working Group discussions, labor representatives, particularly the BRC, insisted that a comprehensive power brake inspection must be performed prior to a train's first run on a given calendar day. The BRC also believed that it is necessary for the first inspection of the day to determine whether the brake shoes and the disc pads actually apply as intended. The BRC further contended that in order to perform a comprehensive inspection equivalent to an initial terminal inspection the train must be walked or otherwise inspected on a car-to-car basis and that these principal inspections should be performed only by carmen or other qualified mechanical personnel as they are the only employees sufficiently trained to perform the inspections. Rail labor representatives also advocated a daily inspection of all safety-related mechanical components with pass/fail criteria or limits written into the Federal safety standards much like the requirements contained in 49 CFR part 215 addressing freight equipment.

Representatives of intercity passenger and commuter railroads expressed the desire to have the flexibility to conduct comprehensive in-depth inspections of the brake and mechanical system sometime during the day in which the equipment is utilized. These parties argued that safety would be better served by allowing the railroads the flexibility to conduct these inspections on a daily basis as it would allow the

railroads to conduct the inspections at locations that are more conducive to permitting a full inspection of the equipment than many of the outlying locations where trains are stationed overnight and where the ability to observe all the equipment may be hampered. It was further contended that, if the railroads are allowed some flexibility in conducting these type of inspections, then the equipment can be moved to a location where a fully qualified mechanical inspector can perform detailed inspections under optimum conditions.

Several parties also pointed out that, with proper maintenance, "tread brake units" and other friction brake components, commonly used in commuter train operations, are highly reliable and that the non-functioning of any individual unit would in no way compromise the overall safety of the train. Furthermore, permitting the inspection of brake components in the middle of the day, rather than at the beginning of the day, involves no greater safety risk to passengers because friction brake systems and their components degrade in performance based largely on use, and nothing short of a continuous brake inspection can guarantee 100-percent performance at all times. Railroad representatives suggested an inspection scheme that would permit an in-depth, comprehensive brake inspection to be performed sometime during the day in which the equipment is used with a brake inspection being performed prior to the first run of the day verifying the continuity of the trainline by performing a set and release on the rear car of the train.

APTA and other passenger railroad representatives strongly maintained that specific inspection criteria or limits related to the mechanical components of passenger equipment were not necessary. During the ongoing meetings of the Working Group, FRA repeatedly requested that railroad representatives provide a recommended list of mechanical components and criteria for their inspection. These representatives consistently responded with very broad requirements basically limited to inspections for obvious and visible defects. Although passenger railroad representatives did not object to the safety principle of a mechanical inspection, they did not want their operations to be bound by a rigid list of components and criteria for the inspection.

Based on consideration of all of the information outlined above, FRA published an NPRM on Passenger Equipment Safety Standards on September 23, 1997. See 62 FR 49728.

This NPRM contained specific proposals related to the inspection, testing, and maintenance of both the brake and mechanical components on passenger equipment. The proposal attempted to balance the concerns of rail labor representatives and representatives of intercity and commuter railroads.

1. Proposed Brake System Inspections

In the 1997 NPRM, FRA proposed to abandon the terminology related to the power brake inspection and testing requirements contained in the current regulations, and proposed to identify various classes of inspections based on the duties and type of inspection required. See 62 FR 49737, 49774-77, 49810-11. FRA believed that this type of classification system would avoid confusion with the power brake inspection and testing requirements applicable to freight operations and would avoid the connotations historically attached to the current terminology. FRA also believed that this approach was better suited for providing operational flexibility to commuter operations while maintaining the safety provided by the current inspection and testing requirements. Although FRA proposed a change in the terminology used to describe the various power brake inspections and tests, the requirements of the inspections and tests closely tracked the current requirements with some modifications made to address the unique operating environment of, and equipment operated in, commuter and intercity passenger train service. Members of the Working Group appeared receptive to this kind of classification system and discussed various options using some of this terminology. Consequently, FRA proposed four different types of brake inspections, "Class I," "Class IA," "Class II," and "running brake test," that were to be performed by commuter and intercity passenger railroads some time during the operation of their equipment.

In the proposal, FRA also divided passenger train operations into two distinct types for purposes of brake inspections and testing. FRA recognized that there were major differences in the operations of commuter or short-distance intercity passenger trains, and long-distance intercity passenger trains. Commuter and short-distance intercity passenger trains tend to operate for fairly short distances between passenger stations and generally operate in relatively short turn-around service between two terminals several times in any given day. In contrast, long-distance intercity passenger trains tend to

operate for long distances, with trips between the beginning terminal and ending terminal taking a day or more and traversing multiple states with relatively long distances between passenger stations. Consequently, FRA proposed the terms "commuter train," "short-distance intercity passenger train," and "long-distance intercity passenger train" in order to identify the inspection and testing requirements associated with each. See 62 FR 49737-38, 49774-76, 49810-11. For the most part, commuter and short-distance intercity passenger trains were treated similarly, whereas long-distance intercity passenger trains had slightly different proposed inspection and testing requirements. In addition, FRA proposed slightly different requirements with regard to the movement of defective equipment in long-distance intercity passenger trains (see the discussion below on the "Movement of Equipment with Defective Brakes").

The proposed Class I brake test basically required an inspection similar to an initial terminal inspection as currently described at § 232.12(c)-(j), but was somewhat more extensive and specifically aimed at the types of equipment being used in commuter and intercity passenger train service. See 62 FR 49738-39, 49774-76, 49810. The proposed Class I brake test would require an inspection of the application and release of the friction brakes on each side of each car as well as an inspection of the brake shoes, pads, discs, rigging, angle cocks, piston travel, and brake indicators if the equipment is so equipped. The Class I brake test would also require testing of the communication signal system and the emergency braking control devices. In recognition of the advanced technology and various designs used in many of these operations, which make observation of the piston travel virtually impossible, FRA proposed to permit the inspection of the piston travel to be conducted either through direct observation of the clearance between the brake shoe and the wheel or by observation of a brake actuator. Furthermore, FRA proposed to require a brake pipe leakage test only when leakage will affect service performance.

As FRA proposed that Class I brake tests be comprehensive inspections of the braking system, FRA believed that commuter and short-distance intercity passenger train operations should be permitted some flexibility in conducting these inspections. Consequently, FRA proposed that commuter and short-distance intercity passenger train operations perform a Class I brake test sometime during the calendar day in

which the equipment is used. FRA believed that the flexibility permitted by the proposed requirement would allow railroads to move equipment to locations that are most conducive to the inspection of the brake equipment and would allow railroads to combine the daily mechanical inspections with the brake inspection for added efficiency.

In the NPRM, FRA recognized the differences between commuter or short-distance intercity operations and long-distance intercity passenger train operations. FRA noted that long-distance intercity passenger trains do not operate in shorter turn around service over the same sections of track on a daily basis for the purpose of transporting passengers from major centers of employment. Instead, these trains tend to operate for extended periods of time, over long distances with greater distances between passenger stations and terminals. Further, these trains may operate well over 1,000 miles in any 24 hour period. Thus, FRA believed that the opportunity for conducting inspections on these trains was somewhat diminished. Therefore, FRA determined that a thorough inspection of the braking system on these types of operations must be conducted prior to the train's departure from an initial starting terminal. Consequently, FRA proposed that a Class I brake inspection be performed on long-distance intercity passenger trains prior to departure from an initial terminal. See 62 FR 49810. FRA did not believe there would be any significant burden placed on these operations as the current regulations require that an initial terminal inspection be performed at these locations.

FRA also recognized that these long-distance intercity passenger trains could conceivably travel significant distances if Class I inspections were required only once every 24 hours the equipment is in service as proposed for commuter and short-distance intercity passenger trains. Thus, FRA believed that some outside mileage limit had to be placed on these trains between brake inspections. Under the current regulations a passenger train is permitted to travel no farther than 1,000 miles from its initial terminal, at which point it must receive an intermediate inspection of brakes that includes an application of the brakes and the inspection of the brake rigging to ensure it is properly secured. See 49 CFR 232.12(b). However, in recognition of the improved technology used in passenger train brake systems combined with the comprehensive nature of the proposed Class I brake tests and mechanical safety inspections being

performed by highly qualified inspectors, FRA proposed to permit long-distance passenger trains to travel up to 1,500 miles between Class I brake tests. Under FRA's proposal a comprehensive Class I brake test would be performed once every calendar day that the equipment is used or every 1,500 miles, whichever ever occurred first. See 62 FR 49739, 49775, 49810.

FRA also proposed that the brake inspection and testing intervals proposed for long-distance passenger trains apply to all Tier II equipment (i.e., equipment operating at speeds greater than 125 mph but not exceeding 150 mph), regardless of whether it is used in short-or long-distance intercity trains. As FRA's proposal permitted operators of Tier II equipment to develop inspection and testing criteria and procedures, these operations would be required to develop a brake test that is equivalent to a Class I brake test for Tier II equipment. Due to the speeds at which this equipment will be allowed to operate, FRA believed it was a necessity that an equivalent Class I brake test be performed on Tier II equipment before it departs from its initial terminal. Similarly, FRA proposed that the equivalent Class I brake test be performed every calendar day in which Tier II equipment is used or every 1,500 miles, whichever comes first. See 62 FR 49739, 49784, 49821.

The proposed Class IA brake test was somewhat less comprehensive than the proposed Class I brake test but included a detailed inspection of the brake system to verify the continuity of the brake system and the proper functioning of the brake valves on each car. A Class IA brake test would be similar to the intermediate brake inspection currently required for freight trains prescribed at § 232.13(d)(1). The proposed Class IA brake test would generally require a walking inspection of the set and release of the brakes on each car; however, the proposal allowed brake indicators to be used to verify the set and release if the railroad determined that operating conditions pose a safety hazard to an inspector walking along the train. The Class IA brake test also required a leakage test if leakage affects service performance, as well as an inspection of: angle cocks; piston travel, if determinable; brake indicators; emergency brake control devices; and communication of brake pipe pressure changes at the rear of train to the controlling locomotive. See 62 FR 49738-39, 49776-77, 49810.

FRA proposed that a Class IA brake test would be performed prior to a commuter or short-distance intercity passenger train's first departure on any

given day. FRA believed that the proposed Class IA brake was sufficiently detailed to ensure the proper functioning of the brake system yet not so intensive that it would require individuals to perform an inspection for which they are not qualified. Although FRA tended to agree with the position advanced by many labor representatives that some sort of car-to-car inspection must be made of the brake equipment prior to the first run of the day, FRA did not agree that it is necessary to perform a full Class I brake test in order to ensure the proper functioning of the brake equipment in all situations. However, contrary to the position espoused by APTA, FRA believed that something more than just a determination that the brakes on the rear car set and release is necessary.

In addition to the proposed Class I and Class IA brake tests, FRA also proposed a Class II brake test. The proposed Class II brake test would be an inspection intended to verify the continuity of the train brake system and would be similar to the intermediate terminal inspection currently prescribed at § 232.13(a). A Class II brake test basically required a set and release of the brakes on the rear car. The proposed Class II test would be required in those circumstances where minor changes to a train consist occur, such as the change of a control stand, the removal of cars from the consist, the addition of previously tested cars, and the situations in which an operator first takes control of the train. See 62 FR 49739, 49777, 49811.

FRA also proposed that a running brake test be conducted as soon as conditions safely permit it to be conducted after a train receives a Class I, Class IA, or Class II brake test. FRA believed that this test should be conducted in accordance with each railroad's operating rules. The proposed "running brake test" requirement was similar to the "running test" requirements currently contained at § 232.16. See 62 FR 49740, 49777, 49811.

2. Proposed Mechanical Inspections

In the 1997 NPRM, FRA proposed three types of mechanical inspections, these included: a calendar day exterior and interior inspection, and a periodic inspection. See 62 FR 49771-73, 49807-09. The proposed exterior calendar day mechanical inspection for passenger cars and unpowered vehicles used in passenger trains was patterned after a combination of the current calendar day inspection required for locomotives under the Railroad Locomotive Safety Standards and the pre-departure

inspection for freight cars under the Railroad Freight Car Safety Standards. See 49 CFR 229.21 and 215.13, respectively. FRA proposed that the calendar day mechanical inspection apply to all passenger cars and all unpowered vehicles used in passenger trains (which includes, e.g., not only coaches, MU locomotives, and cab cars but also any other rail rolling equipment used in a passenger train), and that all exterior mechanical inspections be performed by highly qualified personnel. A mechanical safety inspection of freight cars has been a longstanding Federal safety requirement, and FRA believed that the lack of a similar requirement for passenger equipment created a serious void in the current Federal railroad safety standards.

Rail labor representatives advocated a daily inspection of all safety-related mechanical components with pass/fail criteria or limits written into the Federal safety standards much like the requirements contained in 49 CFR part 215, whereas APTA and other passenger railroad representatives on the other hand strongly maintained that specific inspection criteria or limits are not necessary. During the meetings of the Working Group, FRA repeatedly requested that railroad representatives provide a recommended list of mechanical components and criteria for their inspection. These representatives consistently responded with very broad requirements basically limited to inspections for obvious and visible defects. Although passenger railroad representatives did not object to the safety principle of a mechanical inspection, they did not want their operations to be bound by a rigid list of components and criteria for the inspection.

FRA agreed with labor representatives that a specific list of components to be inspected with enforceable inspection or pass/fail criteria needed to be included as part of the proposed Passenger Equipment Safety Standards. In the 1997 NPRM, FRA identified the components that were to be inspected as part of the exterior calendar day mechanical safety inspection and provided measurable inspection criteria for the components. The proposal required the railroad to ascertain that each passenger car, and each unpowered vehicle used in a passenger train conforms with the conditions enumerated in the proposal. The Working Group members generally agreed that the components contained in the proposal represented valid safety-related components that should be frequently inspected by railroads.

However, members of the Working Group had widely different opinions regarding the criteria to be used to inspect the components. Therefore, as FRA was not provided any clear guidance from the Working Group, FRA selected inspection criteria based on the locomotive calendar day inspection and the freight car safety pre-departure inspection required by 49 CFR parts 229 and 215, respectively. FRA believed that passenger equipment should receive an inspection which is at least equivalent to that received by locomotives and freight cars. The components and conditions identified by FRA to be included in the exterior calendar day mechanical inspection included: couplers; suspension system; trucks; side bearings; wheels; jumpers; cable connections; buffer plates; products of combustion; batteries; diaphragms; and secondary brake systems. See 62 FR 49807-08.

FRA also proposed that each railroad perform an interior calendar day mechanical inspection by individuals qualified by the railroad to do so. FRA originally contemplated requiring the interior inspections to be performed by highly qualified personnel to track the exterior calendar day mechanical inspection requirements. However, after several discussions with members of the Working Group and several other representatives of passenger railroads, FRA determined that the training and experience typical of a mechanical inspector is not necessary and often does not apply to inspecting interior safety components of passenger equipment. In addition, the most economical way to accomplish the mechanical inspection is to combine the exterior inspection with the Class I brake test and then have a crew member or train coach cleaner combine the interior mechanical inspection with coach cleaning. FRA listed the following components that were to be inspected as part of the interior calendar day mechanical inspection: trap doors; end and side doors; manual door releases; safety covers, doors and plates; vestibule step lighting; and safety-related signs and instructions. See 62 FR 49808.

Because FRA intended the daily exterior and interior mechanical inspections to serve as the time when the railroad repairs defects that occurred en route, FRA further proposed that safety components not in compliance with this part would be required to be repaired before the equipment was permitted to remain in or return to passenger service after the performance of the mechanical inspections. In other words, FRA intended for the flexibility

to operate defective equipment in passenger service to end at the calendar day mechanical inspection.

Initially, FRA considered requiring a more extensive list of components to be checked at each interior calendar day mechanical inspection. However, based on discussions conducted with the Working Group, FRA determined that the daily inspection and repair of some interior items could be burdensome to the railroads without producing an offsetting safety benefit. As a result, FRA proposed a periodic mechanical inspection for passenger cars in order to reduce the frequency with which certain components require inspection. FRA proposed that the following components be inspected for proper operation and repaired, if necessary, as part of the periodic maintenance of the equipment: emergency lights; emergency exit windows; seats and seat attachments; overhead luggage racks and attachments; floor and stair surfaces; and hand-operated electrical switches. See 62 FR 49808-09.

FRA determined that virtually all passenger railroads have defined periodic maintenance intervals for all of the equipment they operate with intervals varying from 60 to 180 days, depending on the type of equipment and the service in which it is used. Although FRA did not intend to limit the railroad's flexibility to set periodic maintenance intervals, FRA believed that an outside limit had to be placed on the performance of the periodic mechanical inspection. Thus, FRA proposed that the periodic mechanical inspection be performed at least every 180 days, as that appeared to be the outside limit of currently established maintenance cycles.

In addition to the daily and periodic mechanical inspections, FRA also proposed extensive requirements regarding the performance of single car tests on passenger equipment. FRA believed that the proposed single car test has proven itself effective in uncovering brake system problems that are the root cause of certain wheel defects or that have been caused by repairs made to the brake system. The current regulations require that a single car test be performed on passenger cars whenever they are on a shop or repair track. As the current requirement carries the potential of permitting a railroad to avoid the performance of the test by calling a repair track something other than a repair track, FRA believed it was prudent to base the requirement to perform a single car test on the type of defect or repair involved rather than the location where the defect is repaired. Therefore, FRA proposed a list of

defective conditions and the repair or replacement of certain components which would trigger the requirement to perform a single car test. See 62 FR 49774, 49809. In an attempt to promote the prompt repair of defective equipment, FRA proposed some flexibility in the performance of the test by permitting cars to be moved to a location where the test could be performed if repairs were made at a location that could not perform the test.

3. Proposed Qualifications of Inspection and Testing Personnel

In the 1997 NPRM, FRA proposed the terms "qualified person" and "qualified mechanical inspector" to differentiate between the type of personnel that will be permitted to perform certain brake or mechanical inspections required in the proposal. A "qualified person" was defined as a person determined by the railroad to have the knowledge and skills necessary to perform one or more functions required under this part. Whereas, a "qualified mechanical inspector" was defined as a "qualified person" who as a part of the training, qualification, and designation program required by the proposal had received instruction and training that included "hands-on" experience (under appropriate supervision or apprenticeship) in one or more of the following functions: trouble-shooting, inspection, testing, and maintenance or repair of the specific train brake and other components and systems for which the inspector is assigned responsibility. Further, the mechanical inspector was to be a person whose primary responsibility includes work generally consistent with those functions. See 62 FR 49754.

As FRA intended for Class I brake inspections and exterior calendar day mechanical inspections to be in-depth inspections of the entire braking system and the safety-critical mechanical components, which most likely will be performed only one time in any given day in which the equipment is used, and because of the flexibility FRA proposed in the performance of such inspections, FRA proposed that these inspections had to be performed by individuals possessing not only the knowledge to identify and detect a defective condition in all of the brake equipment required to be inspected but also the knowledge to recognize the interrelational workings of the equipment and the ability to "troubleshoot" and repair the equipment. Consequently, FRA proposed that only qualified mechanical inspectors would be permitted to

perform Class I brake tests and exterior calendar day mechanical inspections.

As the definition of qualified mechanical inspector required the person's primary responsibility to be the inspection, testing, or maintenance of passenger equipment, the definition largely ruled out the possibility of train crew members becoming qualified mechanical inspectors because the primary responsibility of a train crew member is generally the operation of the train. FRA intended the definition to allow the members of the trades associated with the testing and maintenance of equipment such as carmen, machinists, and electricians to become qualified mechanical inspectors. However, FRA made clear that membership in labor organizations or completion of apprenticeship programs associated with these crafts was not required to be designated a qualified mechanical inspector. The two primary qualifications were the possession of the knowledge required to do the job and a primary work assignment inspecting, testing, or maintaining the equipment.

FRA included a clear definition of "qualified person" to allow railroads the flexibility of having train crews perform Class IA, Class II, and running brake tests and interior calendar day mechanical inspections. A qualified person had to be trained and designated as able to perform the types of brake and mechanical inspections and tests that the railroad assigned to him or her. However, a qualified person did not need the extensive knowledge of brake systems or mechanical components or be able to trouble-shoot and repair them. The qualified person was considered to be the "checker." He or she was to possess the knowledge and experience necessary to be able to identify brake system problems.

C. Overview of Comments Relating to Proposed Inspection and Testing Requirements

Those parties filing comments, presenting testimony and participating in the Working Group meetings with regard to the proposed inspection and testing requirements have provided the agency with a wealth of facts and informed opinions, and have been extremely helpful to FRA in resolving the issues. Most commenters provided testimony or written comments on more than one issue and generally were supported by the positions of other commenters. Rather than attempt to paraphrase each commenter's response to each of the proposed regulatory sections, FRA believes it would be better, and more understandable, to

provide a brief overview of the thrust of the comments received in this portion of the preamble and provide general FRA conclusions while addressing the specific comments of various parties in the section-by-section analysis. For purposes of discussion, the comments are grouped in three categories: (1) railroad management representatives; (2) railroad labor representatives; and (3) other commenters.

Railroad management representatives, APTA and its member railroads and Amtrak, generally agreed with the concept of performing the proposed comprehensive daily brake and mechanical inspections. However, these representatives raised a number of concerns with the proposed inspections. Commenters for APTA believed that the proposed requirement to perform a Class IA brake test prior to the first run of the day for commuter and short-distance intercity trains is unnecessary and adds no value to the proposed inspection scheme. APTA recommends that a Class I brake test remain valid for up to 12 hours after it is performed, if the train remains intact with compressors running, and that the performance of a Class II brake test prior to the first departure would be sufficient to ensure the proper operation of the brake system. APTA contends that the performance of a Class II brake test prior to departure would detect any brake problems caused by vandalism and that commuter railroads have been operated safely in this fashion for years.

Railroad management representatives also raised issues concerning the performance of the proposed exterior calendar day mechanical inspection. The major concern of these commenters was that the proposal was unclear as to whether trainsets had to be uncoupled or placed over a pit to perform the inspections. These commenters recommended that the rule text explicitly state that the inspection is to be performed to the extent possible without uncoupling the cars or placing the cars over an elevated pit. APTA representatives also recommended that some of the items proposed in the exterior calendar day mechanical inspection be moved to the periodic mechanical inspection as they could not reasonably be seen without uncoupling the car or placing it over an elevated pit. These included certain requirements related to the inspection of the couplers, the truck and car body assembly, and the center castings on trucks. Some commenters also recommended elimination of the requirement that all secondary braking systems be working, since that could not be known until the

train is in operation and the system is attempted to be used.

APTA representatives also commented on the proposed requirements for performing single car tests. APTA recommended that FRA adopt the new single car test procedures recently developed by the PRESS brake committee rather than the outdated AAR standard. These commenters also recommended that the replacement or repair of certain proposed components not trigger the requirement to perform a single car test since most of the brake system is not disturbed by the repairs and some sort of partial test could sufficiently demonstrate proper operation of the brake system. These commenters also sought the flexibility not to perform the test if a wheel defect is known to be caused by other than a brake-related problem. APTA further recommended that railroads be permitted to perform single car tests from the locomotive control stands.

The major issue raised by railroad management representatives addressed FRA's proposal that all Class I brake tests and all exterior calendar day mechanical inspections be performed by a qualified mechanical inspector (QMI). APTA representatives objected to the use of this designation for several reasons and recommended the alternative term "qualified maintenance person." The main objection of these commenters relates to the requirement that a QMI's primary responsibility must be the inspection, testing, maintenance, troubleshooting, or maintenance of the brake system or mechanical components. These commenters also object to FRA's statement that the definition of QMI largely rules out the possibility of train crew members being designated as QMIs. These commenters contend that any person who is properly trained can perform the inspections proposed by FRA. These commenters also object to the use of the term qualified mechanical inspector based on the concern that such a title might lead employees designated as such to seek premium pay due to the title bestowed.

APTA representatives contend that the proposed definition of QMI violates the Administrative Procedure Act (APA), exceeds FRA's statutory authority, and is counter to the Railway Labor Act. These commenters contend that the Administrative record does not support a finding by FRA that only employees whose "primary responsibility" includes work in the area of troubleshooting, testing, inspecting, maintenance, or repair to train brake and other components are capable of performing Class I and

exterior mechanical inspections. These commenters also contend that FRA's proposed definition is counter to FRA's statutory mandate not to prescribe employee qualifications except where clearly necessary for safety reasons. See 49 U.S.C. 20110. Furthermore, it is contended that the proposed definition is counter to the Railway Labor Act because it impinges upon the exclusive jurisdiction of the National Mediation Board to make final determinations over employee classes or crafts and to interpret collective bargaining agreements. In essence, this argument contends that by limiting the employees who can perform a Class I brake test or an exterior mechanical inspection, FRA is in effect making an employee class or craft designation.

A concern raised by Metra is interrelated to the proposed QMI requirement, in that Metra seeks flexibility or relief from the QMI requirement on weekends. Metra contends that train crews perform most of the brake tests conducted by the railroad on weekends and have been for several years. Metra claims that there is no data showing a decrease in safety on Metra during weekend operations to support FRA's proposal that these brake inspections must be performed by a QMI rather than a train crew member. Metra seeks relief from the QMI requirement on weekends for railroads which have established a successful operating history of performing the tests with qualified persons rather than QMIs.

Rail labor representatives, while generally supportive of the proposed inspection and testing requirements, also raised a number of concerns related to the proposed requirements. Labor representatives objected to the proposed Class IA brake test and continued to insist that railroads should be required to conduct a full Class I brake test prior to the first run of the day. These commenters also advocated against providing any leeway for weekend operations with regard to the proposed inspections and tests, claiming that in many instances equipment used on weekends is used more rigorously than when used during the week and, therefore, quality inspections are probably more important. Labor representatives also noted that FRA failed to address what tests or inspections are to be performed on equipment added to an en route passenger train. Furthermore, these commenters supported the concept of requiring that QMIs perform all Class I brake tests and exterior mechanical inspections but recommended that FRA develop a clear and unequivocal

definition of QMI which specifically excludes train crew members from the definition.

Labor representatives agreed with APTA representatives that FRA should adopt the single car testing procedures developed through the PRESS brake committee. These representatives believed that the newly developed procedures were better than the existing AAR procedures but stressed that the test must be conducted whenever any of the items listed in the NPRM occurred. Labor commenters believed a single car test should be performed prior to permitting a car to be moved and that the test should not be permitted to be performed with a locomotive.

The primary concern raised by labor representatives, particularly the BRC, involves the proposed 1,500-mile inspection interval for performing Class I brake tests on long-distance intercity passenger trains. Although the BRC agrees that the current 1,000-mile inspection should be replaced with the proposed Class I brake test, the BRC objects to extending the distance between brake tests to 1,500 miles. The BRC claims that the proposed increase is not justified by the facts. The BRC contends that an inspection at 1,000 mile intervals is necessary to ensure the safety of passenger train operations due to the numerous defective conditions being found during 1,000 mile inspections. As support for this contention, the BRC submitted information compiled by a carman stationed at Union Station in Washington, D.C. from January 1996 through February of 1997 who allegedly performed 1,000-mile inspections at this location. The BRC also cited other specific examples of defective equipment being moved in passenger trains. Based on this information and extrapolating similar conditions across the country, the BRC contends that numerous defective conditions are uncovered at 1,000 mile brake inspections and that there is no safety justification for extending the distance between brake inspections.

Amtrak responded to the information provided in the BRC's submission regarding defects found during inspections at Washington, D.C. in January 1996 through February 1997. Amtrak contends that Washington, D.C. is not a 1,000-mile inspection point and thus, should not be used to determine the appropriate interval for brake inspections. Amtrak also contends that the data presented was not sufficiently detailed to determine if the listed defects violated the railroad's standards for equipment operating en route. Amtrak contends that based upon their

records 66 percent of the 609 cars identified by the BRC were in trains that terminated at Washington, DC and should not be considered in determining brake inspection intervals. Of the 204 cars alleged to be defective and that were part of trains which run through Washington, DC, Amtrak records show that only 7 of the cars were shopped at Washington, DC and that 110 additional cars were shopped within 7 days after the date of the reported defect. In almost all cases the repairs were made at a location other than Washington, DC, which was frequently the end destination for the train. Amtrak concludes that the defects reported by the BRC at Washington, DC constitute items from an in-bound inspection but were not true defects that required shopping a car from an en route train.

Amtrak provided additional information containing a summary of the set-outs which took place on the railroad during the period from March 1997 to February 1998 for safety and non-safety related causes. This information showed that 301 cars were set-out by Amtrak during this period. Of those 301 cars that were set-out, only 29 were set-out at intermediate (1,000 mile) inspection points and only 15 of those 29 were for brake-related defects. Therefore, Amtrak contends that 90 percent of the cars that were set-out were set-out en route and were not found during intermediate inspections. During this same period Amtrak conducted 1,000-mile inspections on approximately 130,000 cars. Consequently, Amtrak contends that the annual defect rate at intermediate inspection points for this period was 0.02 percent and that it was costing Amtrak approximately \$175,000 per defect found to conduct 1,000-mile inspections.

The BRC submitted a response to the information provided by Amtrak. In this submission the BRC contends that Amtrak's analysis regarding the reported defects is faulty and self-serving. This commenter contends that all the defects found at Union Station must be considered when evaluating an extension of the 1,000-mile inspection regardless of whether Union Station is a 1,000-mile inspection point and regardless of the distance traveled by the cars involved. The BRC contends that any defective conditions found are indicative of what will be traveling past 1,000-mile inspection locations should the distance between brake inspections be extended to 1,500 miles. The BRC further contends that Amtrak's analysis regarding the number of cars set-out at intermediate inspections is flawed for

several reasons. The BRC claims that intermediate inspection points cited by Amtrak are not 1,000-mile inspection locations and that the same type of inspection is not performed. (FRA's review of Amtrak's submission indicates that when Amtrak referred to intermediate inspection points it was referring to 1,000 mile inspection locations.) Further, it is contended that looking solely at the number of cars set-out at these locations is improper because it does not take into account the defects that are repaired while a car remained entrained. The BRC reasserted its position that the data does not support an extension of the 1,000-mile inspection interval and, if anything, the data supports reducing the inspection requirement to 500 miles.

D. General FRA Conclusions

After consideration of all the comments submitted, both in writing and through oral testimony and discussion within the Working Group, FRA intends for the requirements regarding the inspection and testing of passenger equipment contained in the final rule to closely track the proposed requirements contained in the 1997 NPRM. In this final rule, FRA will make slight modifications to the proposed requirements in an attempt to clarify the requirements, to cover areas that were not adequately addressed, and to address the specific comments submitted. FRA generally believes that the approach taken in the NPRM to the inspection and testing of passenger equipment incorporates the current best practices of the industry, effectively balances the positions of the various parties involved, and increases the overall safety of passenger train operations.

1. Brake and Mechanical Inspections

FRA intends to modify the Class I brake test and the exterior calendar day mechanical inspection requirements to ensure the proper operation of all cars added to a train while en route. FRA is adding certain provisions to require the performance of a Class I brake test and an exterior mechanical inspection on each car added to a passenger train at the time it is added to the train unless documentation is provided to the train crew that a Class I brake test and an exterior mechanical inspection was performed on the car within the previous calendar day and the car has not been disconnected from a source of compressed air for more than four hours. FRA is adding this requirement in order to address the concerns raised by various labor representatives that no provisions were provided in the

proposal to address circumstances when cars are added to an en route train. If a car has received such inspection, the railroad will be required to perform a Class II brake test at the time the car is added to the train. FRA believes that these provisions will ensure the integrity of the brakes and mechanical components on every car added to an existing train and should not be a burden for railroads since cars are generally added to passenger trains at major terminals with the facilities and personnel available for conducting such inspections. Furthermore, these inspection requirements are very similar to what is currently required when a freight car is added to a train while en route. See 49 CFR §§ 215.13 and 232.13.

FRA is also modifying the requirements for when a Class IA brake test must be performed. FRA continues to believe that some type of car-by-car inspection must be performed prior to a passenger train's first run of the day if the train was used in passenger service the previous day without any brake inspection being performed after it completed service and before it laid-up for the evening. However, FRA agrees with the comments submitted by APTA representatives that the need for such an inspection is minimized if a Class I brake test is performed within a relatively short period of time prior to the first run of the day and the train has not been used in passenger service since the performance of that inspection. From a safety standpoint, it appears to be unnecessary to require the performance of a second comprehensive brake test when the equipment has not been used and has remained on a source of compressed air since the last comprehensive brake test was performed. In such circumstances, FRA believes that the performance of a Class II brake test would be sufficient to determine if there are any problems with the braking system due to vandalism or other causes since the last comprehensive Class I brake test. Furthermore, as APTA's comments point out, commuter railroads have been safely operated in a fashion similar to this for a number of years. Consequently, the final rule will require the performance of a Class II brake test prior to the first run of the day if a Class I brake test was performed within the previous twelve hours and the train has not been used in passenger service and has not been disconnected from a source of compressed air for more than four hours since the performance of the Class I brake test.

FRA will also include certain minimal recordkeeping requirements related to the performance of the interior and

exterior calendar day and periodic mechanical inspection provisions. FRA believes that proper and accurate recordkeeping is a cornerstone of any inspection process and is essential to ensuring the performance and quality of the required inspections. Without such records the inspection requirements would be difficult to enforce. Although recordkeeping was discussed in the Working Group and FRA believes them to be an integral part of any inspection requirement, FRA inadvertently omitted any such requirements in the NPRM specifically related to mechanical inspections. This omission was brought to FRA's attention through verbal and written comments provided by various interested parties.

FRA is also making minor changes and clarifications to the proposed exterior calendar day mechanical inspection. In the final rule, FRA is explicitly stating that the exterior mechanical inspection is to be performed to the extent possible without uncoupling the trainset and without placing the equipment over a pit or on an elevated track. This explicit statement is being added in response to APTA's concerns regarding what would constitute proper performance of these inspections. FRA intended the inspection to be very similar to the freight car safety inspection currently required pursuant to Part 215. FRA also recognizes that certain items contained in the proposed exterior mechanical inspection could not have been easily inspected without proper shop facilities. Therefore, FRA is moving some of the exterior mechanical inspection requirements related to couplers and trucks to the periodic mechanical inspection requirements as these periodic inspections will likely be performed at locations with facilities available that are more conducive to inspecting the specific components. The changes made in the final rule were discussed with the Working Group at the December 15-16, 1997 meeting.

FRA is also adding various provisions related to the performance of periodic mechanical inspections. As noted above, FRA is moving certain items from the exterior calendar day mechanical inspection to the periodic mechanical inspections as they cannot be easily inspected without proper shop facilities. In the NPRM, FRA proposed that a periodic mechanical inspection be performed every 180 days. After a review of the industry's practices regarding the performance of periodic mechanical-type inspections, FRA believes that the items removed from the calendar day mechanical inspection as well as some of the items previously

proposed in the 180 day periodic mechanical inspection should be and are currently inspected on a more frequent basis by the railroads. As it is FRA's intent in this proceeding to attempt to codify the current best practices of the industry, FRA believes that the current intervals for inspecting certain components should be maintained. Therefore, FRA will require the periodic inspection of certain mechanical components, floors, passageways, and switches on a 92-day basis. Furthermore, FRA will also require a 92-day inspection of emergency lighting systems as they are critical to the safety of passengers in the event of an accident or derailment. FRA is adding an inspection of the roller bearings to the 92-day inspection. Although this component was inadvertently left out of the 1997 NPRM, they were covered in the 1994 NPRM; and FRA believes that roller bearings are an integral part of the mechanical components and must be part of any mechanical inspection scheme. Furthermore, several labor commenters recommended inspections criteria similar to that contained in 49 CFR part 215, which specifically addresses the condition of roller bearings. See 49 CFR § 215.115. As roller bearings are best viewed in a shop facility context, FRA is adding the inspection of this component to the 92-day periodic mechanical inspection, which is consistent with the current practices of the industry.

FRA will also retain a semi-annual periodic inspection for certain components as proposed in the 1997 NPRM. FRA proposed a 180-day periodic inspection, but in order to remain consistent with the 92-day inspection scheme, FRA will require a 184-day periodic inspection of certain components, including: seats; luggage racks; beds; and emergency windows. FRA removed the inspection of the couplers from the calendar day inspection and added them to the 184-day inspection requirement. FRA is placing the coupler inspection at this interval rather than the 92-day interval in order to reduce the amount of coupling and uncoupling that will be required. FRA is also extending the inspection interval related to manual door releases. Due to the general reliability of these devices and because they are partially inspected on a daily basis, FRA believes that an annual inspection of the releases will ensure their proper operation. Thus, FRA will require an inspection of the manual door releases every 368 days.

Although FRA has established certain periodic inspection intervals in order to

establish a default interval, FRA intends to make clear that FRA will allow railroads to develop alternative intervals for performing such inspections for specific components or equipment based on a more quantitative reliability assessment completed as part of their system safety programs. FRA expects that railroads will utilize reliability-based maintenance programs as appropriate, given this opportunity to do so. As successful reliability based maintenance programs are dynamic, it is expected that, in the process of defining and documenting the reliable use of equipment or specific components, over time, continued assessments may indicate a need to increase or decrease inspection intervals. FRA will only permit lengthened inspection intervals beyond the default intervals when such changes are justified by a quantitative reliability assessment. The previously described inspection intervals are based on sound but limited information provided to FRA that FRA believes represents a combination of operating experience, analytical analyses, knowledge and intuition. FRA does expect that railroads will collect and respond to additional data throughout the operating life of the equipment. (A detailed discussion of reliability-based maintenance programs is contained in the section-by-section discussion of § 238.307.)

FRA is also modifying the proposed requirements related to the performance of single car tests. Based on the recommendations of representatives from both rail labor and rail management, FRA will reference the single car testing procedures which were developed by APTA PRESS rather than the AAR single car testing procedures referenced in the 1997 NPRM. The single car test procedures were issued by APTA on July 1, 1998 and are contained in APTA Mechanical Safety Standard SS-M-005-98. The single car test procedures issued by APTA are more comprehensive and better address passenger equipment than the older AAR recommended practices. In the 1997 NPRM, FRA proposed to require the performance of single car tests on all passenger cars and other unpowered vehicles used in passenger trains. However, the definition of passenger cars includes self-propelled vehicles such as MU locomotives, to which FRA did not intend to apply the proposed single car test requirements. Thus, FRA is modifying the language of the single car test requirements to clarify that the testing requirements apply to nonself-propelled passenger cars and

unpowered vehicles used in passenger trains.

FRA is also modifying some of the circumstances under which a single car test is required to be performed. FRA agrees with several of the commenters that the 1997 NPRM may have been over-inclusive in listing the components whose repair, replacement, or removal would trigger the performance of a single car test. Thus, in accordance with the discussions conducted with the Working Group in mid-December of 1997, FRA is amending the list of brake components to include only those circumstances where a relay valve, service portion, emergency portion, or pipe bracket is removed, repaired, or replaced. Whenever any other component previously contained in the 1997 NPRM is removed, repaired, or replaced FRA will require that only that portion that is renewed or replaced be tested. FRA believes that the items removed from the previously proposed list can generally be removed, replaced, or repaired without affecting other portions of the brake system and, thus, the need to perform a single car test is reduced. FRA also will not mandate the performance of a single car test for wheel defects, other than a built-up tread, if the railroad can establish that the wheel defect is due to a cause other than a defective brake system. Thus, the burden will fall on the railroad to establish and maintain sufficient documentation that a wheel defect is due to something other than a brake-related cause. FRA intends to make it clear that if the railroad cannot establish the specific non-brake related cause for a wheel defect, it is required to perform a single car test.

2. Qualified Maintenance Person

An issue related to the inspection and testing requirements on which FRA has received extensive comment, particularly from APTA representatives, is the proposed definition of "qualified mechanical inspector (QMI)." FRA recognizes the concern raised by some commenters that the term QMI might result in employees designated as such to seek some sort of premium pay status. Although FRA is not overly swayed by this concern, FRA is changing the term in the manner suggested by these commenters to "qualified maintenance person (QMP)." FRA believes that the term used to describe the individual responsible for conducting certain brake and mechanical inspections has little bearing on the qualifications or knowledge of the individual and, thus, is not adverse to accommodating a change in the term. However, but for clarifying language, FRA is not changing

the underlying definition of what is required to be designated as a QMP.

The major concern raised by APTA representatives centered on the requirement contained in the definition of a QMI that the person's "primary responsibility" include work in the area of troubleshooting, testing, inspecting, maintenance, or repair to train brake systems and other components. These commenters believed that anyone who is properly trained can perform the required inspections regardless of the amount of time actually spent engaged in the activity.

The entire concept of QMI (or QMP) is premised on the idea that flexibility in the inspection of passenger equipment, flexibility in the movement of defective equipment and slight reductions in periodic maintenance could be provided if the mechanical components and brake system were inspected on a daily basis by highly qualified individuals. Thus, the requirement that a highly qualified person perform certain brake and mechanical inspections is part of a package which includes flexibility in the performance of brake and mechanical inspections, permits wider latitude in the movement of defective equipment, and provides reductions in the periodic maintenance that is required to be performed on certain equipment. Therefore, FRA expects the highly qualified person to be an individual who can not only identify a particular defective condition but who will have the knowledge and experience to know how the defective condition affects other mechanical components or other parts of the brake system and will have an understanding of what might have caused a particular defective condition. FRA believes that in order for a person to become highly proficient in the performance of a particular task that person must perform the task on a repeated and consistent basis. As it is almost impossible to develop and impose specific experience requirements, FRA believes that a requirement that the person's primary responsibility be in one or more of the specifically identified work areas and that the person have a basic understanding of what is required to properly repair and maintain safety-critical brake or mechanical components is necessary to ensure the high quality inspections envisioned by the rule.

FRA disagrees with the contentions raised by APTA representatives that the definition of QMI (or QMP) violates the APA and exceeds FRA's statutory authority. Contrary to the assertions made by APTA representatives, the administrative record together with

FRA's independent knowledge of the passenger rail industry do support a requirement that only a QMI (or QMP) conduct Class I brake tests and exterior mechanical inspections. Except for limited weekend service operated by Metra, virtually every passenger train operation affected by this rule currently conducts daily brake and mechanical inspections utilizing employees who, except for training on the requirements of this rule, would meet the definition of a QMI (or QMP). That is, the employees who are currently responsible for conducting the major daily brake and mechanical inspections on virtually all passenger trains meet the "primary responsibility" requirement contained in the definition of QMI (or QMP). Therefore, the industry's current practice acknowledges and supports the need to conduct daily inspections with employees whose primary responsibility is the troubleshooting, inspection, testing, maintenance, or repair of train brake systems or other mechanical components. Furthermore, due to the flexibility provided in this rule for conducting brake and mechanical inspections and moving defective equipment as well as the extension of certain periodic maintenance, FRA believes that the current best practices of the railroads with regard to brake and mechanical inspections must be maintained, especially as they relate to the quality of the personnel performing the inspections and the continuity of observation provided by a dedicated work force (which is important to detection of developing hazards in the fleet).

FRA further believes that APTA's contention that the definition of QMI (or QMP) violates the Railway Labor Act is due to a misunderstanding of the definition. FRA is not attempting to make any determinations over employee classes or crafts or to interpret collective bargaining agreements. In the 1997 NPRM, FRA stated that the definition would allow the members of trades associated with testing and maintenance of equipment such as carmen, machinists, and electricians to become QMIs (or QMPs). However, FRA further stated that membership in a labor organization or completion of an apprenticeship program associated with a particular craft is not required. FRA made clear that the two overriding qualifications are possession of the knowledge required to do the job and a primary work assignment inspecting, testing, or maintaining the equipment.

FRA also intends to clarify the meaning of "primary responsibility" as used in the definition of QMP. As a rule

of thumb FRA will consider a person's "primary responsibility" to be the task that the person performs at least 50 percent of the time. Therefore, a person who spends at least 50 percent of the time engaged in the duties of inspecting, testing, maintenance, troubleshooting, or repair of train brakes systems and other mechanical components could be designated as a QMP, if the person is properly trained to perform the tasks assigned and possesses a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which they are assigned responsibility. However, FRA will consider the totality of the circumstances surrounding an employee's duties in determining a person's "primary responsibility." For example, a person may not spend 50 percent of his or her day engaged in any one readily identifiable type of activity; in those situations FRA will have to look at the circumstances involved on a case-by-case basis.

The definition of QMP largely rules out the possibility of train crew members being designated as these highly qualified inspectors since the primary responsibility, as defined above, of virtually all current train crew personnel is the operation of trains and for the most part train crew personnel do not possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components that are inspected during Class I brake tests or exterior calendar day mechanical inspections. However, contrary to the contentions raised by APTA, there is nothing in the rule which prevents a railroad from utilizing employees who are not designated as QMPs from conducting brake and mechanical inspections provided those inspections are not intended to constitute the required Class I brake test or the exterior calendar day mechanical inspection. Furthermore, the rule provides that certain required brake and mechanical inspections (Class IA brake tests, Class II brake tests, running brake tests, and interior calendar day mechanical inspections) may be performed by a properly "qualified person" and do mandate the use of a QMP. FRA believes that these are the types of inspections which train crew members are currently assigned to perform and have been performing effectively for years. Consequently, FRA believes that the inspection requirements and the qualification requirements contained in this rule are merely a codification of the current best practices of the passenger

train industry and are necessary to ensure the continued safety of those operations while providing the industry some flexibility in the performance of certain inspections and in the movement of defective equipment as well as providing slight increases in periodic maintenance cycles for some equipment.

FRA does not intend to provide any special provisions for weekend operations with regard to the conducting of Class I brake tests and calendar day mechanical inspection by QMPs as suggested in the comments by some APTA representatives. The rationale for requiring daily brake and mechanical attention by highly qualified inspectors, a proposition generally accepted by Working Group members, appears to apply equally to weekend periods. In fact based on FRA's experience, equipment used on weekends is generally used more rigorously than equipment used during weekday operations. At present only one commuter operation (Metra) has raised significant concerns regarding weekend operations. Although there is no specific data suggesting that existing weekend operations on Metra, which involves having many of the brake inspections conducted by train crew members, have created a safety hazard, FRA has found it virtually impossible to draft and justify provisions providing limited flexibility for Metra that do not create potential loopholes that could be abused by other passenger train operations that have not had the apparent safety success of Metra. Moreover, based on FRA's independent investigation of Metra's operation, it is believed that the impact of this final rule on Metra's weekend operations will be significantly less than that indicated in APTA's written comments and originally perceived by Metra. FRA believes that most of the personnel needed by Metra to conduct its weekend operations in accordance with this final rule are available to Metra or its contractors and that minor adjustments could be made to its weekend operations that might avoid significant new expense.

As the concerns regarding weekend operations appear to involve just one commuter operation and because the precise impact on that operation is not known or available at this time, FRA believes that the waiver process would be the best method for evaluating any lingering concerns that may be raised by that operator. This would afford FRA an opportunity to provide any appropriate relief based on the specific needs and the safety history of the individual railroad without opening the door to

potential abuses by other railroads that are not similarly situated.

3. Long-Distance Intercity Passenger Trains

FRA is also retaining the requirements proposed in the 1997 NPRM related to the performance of Class I brake tests on long-distance intercity passenger trains. FRA will require that a Class I brake test be performed on long-distance intercity passenger trains prior to the trains' departure from an originating terminal and once every 1,500 miles or every calendar day, whichever occurs first. After reviewing the information and comments submitted by labor representatives, the information and comments provided by Amtrak, and based upon the independent information developed by FRA, FRA believes that the enhanced inspection scheme contained in this final rule will ensure the continued safety of long-distance intercity passenger trains.

Contrary to the statements made in the comments submitted by some labor representatives, FRA is not merely increasing the distance between brake inspections. Rather, FRA is increasing both the quality and the content of the inspections that must be performed on long-distance intercity passenger trains and, thus, increasing the safety of such trains. Under the current regulations these passenger trains are required to receive an initial terminal brake inspection at the point where they are originally assembled; from that point the train must receive an intermediate brake inspection every 1,000 miles. The current 1,000-mile inspection merely requires the performance of a leakage test, an application of the brakes and the inspection of the brake rigging on each car to ensure it is properly secured. See 49 CFR 232.12(b). The current 1,000-mile brake inspection does not require 100 percent operative brakes prior to departure and does not require piston travel to be inspected. The current regulations also do not require the performance of any type of mechanical inspection on passenger equipment at 1,000-mile inspection points or at any other time in the train's journey. Thus, under the current regulations a long-distance intercity passenger train can travel from New York to Los Angeles on one initial terminal inspection, a series of 1,000-mile inspections, and no mechanical inspections.

Whereas, this rule will require the performance of a Class I brake test, which is more comprehensive than the current initial terminal inspection, at the point where the train is originally assembled and will require the performance of another Class I brake test

every 1,500 miles or every calendar day thereafter, whichever comes first, by highly qualified inspectors. Thus, at least every 1,500 miles or every calendar day a long-distance passenger train will be required to receive a brake inspection which is more comprehensive than the current initial terminal inspection and which requires that the train have 100 percent operative brakes and have piston travel set within established limits. Furthermore, this rule will require the performance of an exterior and interior mechanical inspection every calendar day that the train is in service. Consequently, the inspection scheme proposed in the 1997 NPRM and retained in this final rule will, in FRA's view, increase the safety and better ensure the integrity of the brake and mechanical components of long-distance passenger trains.

FRA also believes that some recognition must be given to the various types of advanced braking system technologies used on many long-distance intercity passenger trains. Many of these advanced technologies are not found with any regularity in freight operations. Dynamic brakes are typically employed on these types of trains 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 on today's long-distance passenger trains are far more reliable than was the case several decades ago. Other technological advances utilized with regularity by these passenger trains 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 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.
- Brake ratios that are 2½ times greater than the brake ratios of loaded freight cars.

The reliability and performance of brake systems on these passenger trains enhance the safety of these trains and, when combined with other aspects of this discussion, support FRA's determination that these brake systems can be safely operated with the inspection intervals that were proposed in the 1997 NPRM. Although some of the technologies noted above have existed for several decades, most of the technologies were not in wide spread use until after 1980. Furthermore, most

of the noted technological advances just started to be integrated into one efficient and reliable braking system within the last decade. Consequently, the technology incorporated into the brake equipment used in today's long-distance intercity passenger trains has increased the reliability of the braking system and permits the safe operation of the equipment for extended distances even though a portion of the braking system may be inoperative or defective.

FRA also disagrees with the contentions raised by certain labor representatives that the facts and data do not support the 500 mile extension in the brake inspection interval even with the more comprehensive inspection scheme. These commenters recommend that the current 1,000-mile brake inspection interval be retained together with the increased inspection regiment. These commenters contend that due to the large number of defects being found at 1,000-mile inspections that the need to retain the inspection is justified. As an example and support for this position, the BRC submitted information containing numerous defective conditions compiled by carmen stationed at Union Station in Washington D.C. from January 1996 through February of 1997 that the carmen allegedly found on trains traveling through Union Station. After reviewing the documentation submitted, FRA does not believe the information supports the conclusion that 1,000-mile brake inspections must be maintained and that it would be unsafe to extend the distance between brake inspections under the inspection scheme contained in this final rule.

Due to the lack of detail contained in the information submitted by the BRC, it is impossible to determine whether the vast majority of the alleged defective conditions were defective under the Federal regulations or whether the conditions were merely in excess of Amtrak's voluntary maintenance standards or operating practices. In addition, based on the description of some of the conditions, they would not be considered defective conditions under current Federal regulations. Furthermore, the vast majority of the conditions alleged in the document were not power brake defects, and thus, under the current regulations, would not have been required to have been inspected at a 1,000-mile inspection, nor do the current regulations mandate any type of mechanical inspection on passenger equipment. Moreover, as the vast majority of the alleged conditions were mechanical and wheel defects, FRA believes that these types of defective conditions will be addressed

by the exterior calendar day mechanical inspection contained in this final rule which will be required to be performed every calendar day that a piece of equipment is in service.

FRA agrees with the comments submitted by the BRC that the data and information submitted by Amtrak regarding the allegedly defective equipment found at Washington, D.C., does not fully address whether the cars identified by carmen at that location were defective and does indicate that at least many of the cars were repaired for the defective condition noted within several days after moving through Washington, D.C. However, contrary to the conclusions reached by labor representatives, the fact that a car remained in service with an alleged defective mechanical or brake condition does not necessarily mean the train involved was in an unsafe condition or that the equipment was being moved illegally. The current regulations regarding freight mechanical equipment and the existing statutory mandates regarding the movement of equipment with defective safety appliances and brakes permit the movement of a certain amount of defective equipment to certain locations provided it is determined by a qualified person that such a movement can be made safely or that a sufficient percentage of the brakes remain operative. See 49 U.S.C. 20303, 49 CFR 215.9. As this final rule will specifically address the inspection of the mechanical components on passenger equipment and the movement of defective mechanical components, which is not covered by existing regulations, FRA believes that the amount of defective equipment being operated will be reduced significantly and will be handled safely in revenue trains. Although FRA agrees that the information submitted by Amtrak regarding the number of cars set out at 1,000-mile inspection points does not reflect the true number of defects being found during the inspections, FRA does find it significant that a very small percentage of cars set-out by Amtrak are set-out at 1,000-mile inspection locations and that most set-outs occur en route. (In its April 17, 1998 letter, Amtrak used the term intermediate inspections which upon FRA's review of the information provided was intended to describe 1,000-mile inspection locations.)

FRA also feels it is necessary to make clear that the number of cars alleged to have been found in defective condition at Union Station in Washington D.C. is not indicative of a safety problem on long-distance intercity passenger trains. Assuming that all of the cars contained

in BRC's submission were in fact defective as alleged, it appears that approximately 750 cars were defective. However, the information also reveals that approximately 1,300 trains were inspected, thus, using a conservative estimate of 10 cars per train, approximately 13,000 cars were inspected. Therefore, approximately only 6 percent of the cars inspected were found to contain either a mechanical or brake defect. Furthermore, of the approximate 750 cars alleged to have been found defective, only approximately 20 percent of those cars contained a power brake-related defect. Consequently, only about 1-2 percent of the total cars inspected contained a power brake-related defect. Moreover, from the information provided it appears that none of the trains contained in the BRC submission were involved in any type of accident or incident related to the defective conditions alleged.

FRA believes that the key to any inspection scheme developed for long-distance intercity passenger trains is the quality of the inspection which is performed at a train's point of origin. FRA is convinced that if a train is properly inspected with highly qualified inspectors and has 100 percent operative brakes at its point of origin, then the train can easily travel up to 1,500 miles between brake inspections without significant deterioration of the braking system. FRA independently monitored a few long-distance intercity passenger trains running from New York to Miami, New York to New Orleans, and New York to Chicago and found that when the trains departed from their point of origin with a brake system that was defect free they arrived at destination without any defective conditions existing on the trains' brake system. These findings are consistent with FRA's experience in inspecting long-distance intercity passenger trains over the last several years. It should be noted that during this independent monitoring, FRA did find some trains that after receiving initial terminal inspections still contained some defective conditions on the brake system. Although FRA believes that none of the defective conditions found would have prevented the safe operation of the trains, FRA recognizes that FRA as well as the railroads must be vigilant in ensuring that quality brake system inspections are performed on a train at its point of origin and at each location where a Class I brake test is required to be performed. Consequently, due to the comprehensive nature of Class I brake tests and the exterior

calendar day mechanical inspection combined with the technological advances incorporated into the braking systems utilized in these types of trains and after a review of the data and information provided and based on FRA's experience with these types of operations, FRA intends to retain the proposed 1,500 mileage interval for the performance of Class I brake tests in this final rule.

VII. Movement of Defective Equipment

A. Background

The current regulations do not contain requirements pertaining to the movement of equipment with defective power brakes. The movement of equipment with these types of defects is currently controlled by a specific statutory provision originally enacted in 1910, 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 which 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 make-up 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 farther than the nearest place on the railroad's line where the necessary repairs can be made or, at the option of the receiving carrier, to a repair point that is no farther than the repair point on the delivering line.

The requirements regarding the movement of equipment with defective or insecure brakes noted above can and do create safety hazards as well as operational difficulties in the area of commuter and intercity passenger railroad operations. As the provisions regarding the movement of defective brake equipment were written almost a century ago, they do not address the realities of these types of operations in today's world. Strict application of the requirements has the potential of causing major disruptions of service and 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 passengers being discharged between stations where adequate facilities for their safety are not available or in the overcrowding of station platforms and trailing trains due to discharging passengers from a defective train at a location other than the passenger's destination. In addition, strict application of the statutory requirements could result in the moving of trains with defective brake equipment against the current of traffic during busy commuting hours. Irregular movements of this type increase the risk of collisions on the railroad. Furthermore, many of today's commuter train operations often utilize six cars or less in trains and in many instances operate just two-car trains. Consequently, the necessity to cut out the brakes on one car can easily result in noncompliance with the 85-percent requirement for hauling the car for repairs, thus prohibiting the train's movement and resulting in the same type of safety problems noted above.

B. Overview of 1997 NPRM

In the NPRM, FRA attempted to recognize the nature of commuter and intercity passenger operations and the importance of addressing the safety of passengers, as well as avoiding

disruption of this service, when applying the requirements regarding the movement of equipment with defective brakes on a day-to-day basis. In addition, the representatives of commuter and intercity passenger train operations participating in the proceeding requested that the regulations be brought up to date, recognizing that brakes will have to be cut out en route from time to time (e.g., because of damage from debris on the track structure or because of sticking brakes), and that contemporary braking systems and established stopping distances provide a very considerable margin of safety. Representatives from APTA proposed a method of updating the existing requirements regarding the movement of commuter passenger equipment with defective brakes to bring them more in line with the realities of today's operations. FRA believed that the restrictions proposed by APTA were very conservative and effectively ensure a high level of safety in light of the reliability of braking systems currently used in commuter and intercity passenger train operations. FRA believed that affirmatively recognizing appropriate movement restrictions would actually enhance safety, since compliance with the existing restrictions is potentially unsafe.

FRA recognized that some of the restrictions proposed in the NPRM were not in accord with the requirements contained in 49 U.S.C. 20303(a). Therefore, FRA proposed the utilization of the authority granted in 49 U.S.C. 20306 to exempt passenger train operations covered by this part from the statutory requirements contained in 49 U.S.C. 20303(a) permitting the movement of equipment with defective or insecure brakes only if various requirements are met, including the requirement that the movement for repair be only to the nearest location where the necessary repairs can be made. FRA believed that the granting of this exemption was justified based on the technological advances made in the brake systems and equipment used in passenger operations, and was necessary for these operations to make efficient use of the technological advances and protect the safety of the riding public. See 62 FR 49740-42, 49756-58. Although FRA recognized that it could be argued that the purpose of section 20306 is too narrow to comprehend the instant application, FRA believed that the use of the provision as contemplated in this proposal was consistent with the authority granted the Secretary of Transportation. As noted previously, the

statutory requirements regarding the movement of equipment with defective brake equipment were written nearly a century ago and, in FRA's opinion, were focused generally on the operation of freight equipment and did not contemplate the types of commuter and intercity passenger train operations currently prevalent throughout the nation. Since the original enactment in 1910 of the provisions now codified at 49 U.S.C. 20303(a), there have been substantial changes both in the nature of the operations of passenger trains as well as in the technology used in those operations.

In the NPRM, FRA noted that contemporary passenger equipment incorporates various 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 commuter and intercity passenger train operations incorporate 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.
- Brake ratios that are $2\frac{1}{2}$ 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 were not in wide spread use until after 1980. Furthermore, most of the noted technological advances just started to be integrated into one efficient and reliable braking system within the last decade. In addition to the technological advances, commuter and intercity passenger train operations have experienced considerable growth in the last 15 years necessitating the need to provide more reliable and efficient service to the riding public. Since 1980, the number of commuter operations providing rail service has almost doubled and the number of daily passengers serviced by passenger operations has more than doubled over the same time period. Furthermore, commuter and intercity passenger train operations conduct more frequent single car tests, COT&S, and maintenance of the braking systems than is generally the practice in the freight industry. Consequently, FRA concluded that the technology incorporated into the brake equipment used in today's commuter and intercity passenger train operations has increased the reliability of the braking system and permits the safe operation of the equipment for extended distances even though a portion of the braking system may be inoperative or defective.

FRA also proposed an exemption for passenger train operations from a long-standing agency interpretation, based on a 1910 ICC order codified at 49 CFR 232.1, that prohibits the movement of a train for repairs under 49 U.S.C. 20303 if less than 85 percent of the train's brakes are operative. FRA found that many passenger operations utilize a small number of cars in their trains and the necessity to cut out the brakes on just one car can easily result in noncompliance. FRA believed that the proposed speed restrictions would compensate for the loss of brakes on a minority of cars. See 62 FR 49740-42, 49756-58.

Based on the preceding discussions, FRA proposed various restrictions on the movement of vehicles with defective brake equipment which allow commuter and intercity passenger train operations to take advantage of the efficiencies created due to the advanced braking systems these operations employ as well as the improvements made in brake equipment over the years, while ensuring if not enhancing the safety of the traveling public. See 62 FR 49756-58, 49796-98. FRA proposed to permit trains to be operated with up to 50 percent inoperative brakes to the next forward passenger station or terminal based on the percentage of operative brakes, which may have resulted in

movements past locations where the necessary repairs could be made. However, to ensure the safety of these trains with lower percentages of operative brakes, FRA also proposed various speed restrictions and other operating restrictions, based on the percentage of operative brakes. FRA believed that the proposed speed restrictions were very conservative and ensured a high level of safety. In fact, test data established that with the proposed speed restrictions the stopping distances of those trains with lower percentages of operative brakes were shorter than if the trains were operating at normal speed and had 100 percent operative brakes. Consequently, FRA believed that the proposed approach to the movement of equipment with defective brakes not only enhanced the overall safety of train operations but benefitted both the railroads, by providing operational flexibility, and the traveling public, by permitting them to get to their destinations in a more expedient and safe fashion.

FRA also proposed various requirements to ensure that equipment being hauled for repairs is adequately identified. Currently, there is no requirement that equipment with defective power brakes be tagged or otherwise identified, although most railroads voluntarily engage in such activity. Furthermore, the current regulations regarding freight cars and locomotives contain tagging requirements for the movement of equipment not in compliance with those parts. See 49 CFR 215.9 and 229.9. Therefore, FRA proposed specific requirements related to the identification of equipment with defective power brakes through either the traditional tags which are placed in established locations on the equipment or by an automated tracking system developed by the railroad. See 62 FR 49796-98. FRA also proposed that certain information be contained whichever method was used by a railroad. FRA believed that the proposed tagging or tracking requirements add reliability, accountability, and enforceability to ensure the timely and proper repair of equipment with defective power brakes.

FRA also proposed a new method for calculating the percentage of operative power brakes (operative primary brakes) in a train. Although the statute discusses the percentage of operative brakes in terms of a percentage of vehicles, the statute was written nearly a century ago and at that time the only way to cut out the brakes on a car or locomotive was to cut out the entire unit. See 49 U.S.C. 20302(a)(5)(B).

Today, virtually every piece of equipment used in passenger service can have the brakes cut out on a per-truck or per-axle basis. Consequently, FRA merely proposed a method of calculating the percentage of operative brakes based on the design of passenger equipment used today, and thus, a means to more accurately reflect the true braking ability of the train as a whole. FRA believed that the proposed method of calculation was consistent with the intent of Congress when it drafted the statutory requirement and simply recognized the technological advancements made in braking systems over the last century. Consequently, FRA proposed that the percentage of operative brakes would be determined by dividing the number of axles in the train with operative brakes by the total number of axles in the train. Furthermore, for equipment utilizing tread brake units (TBU), FRA proposed that the percentage of operative brakes be determined by dividing the number of operative TBUs by the total number of TBUs. See 62 FR 49757, 49797.

The NPRM also contained proposed provisions regarding the movement of equipment with other than power brake defects. See 62 FR 49758-59, 49798-99. There are currently no statutory or regulatory restrictions on the movement of passenger cars with defective conditions that are not power brake or safety appliance related. The proposed provisions contained in the NPRM were similar to the provisions for moving defective locomotives and freight cars currently contained in 49 CFR 229.9 and 215.9, respectively. As these provisions have generally worked well with regard to the movement of defective locomotives and freight cars and in order to maintain consistency, FRA modeled the proposed movement requirements on those existing requirements. FRA proposed to allow passenger railroads the flexibility to continue to use equipment with non-safety-critical defects until the next scheduled calendar day exterior mechanical inspection. However, FRA intended for the calendar day mechanical inspections to be the tool used by railroads to repair all reported defects and to prevent continued use of defective equipment to carry passengers.

In the NPRM, FRA intended for 49 CFR 229.9 to continue to govern the movement of locomotives used in passenger service which develop defective conditions, not covered by part 238, that are not in compliance with part 229. FRA also did not intend to alter the current statutory requirements contained in 49 U.S.C. 20303 regarding the movement of

passenger equipment with defective or insecure safety appliances. Consequently, in the NPRM, FRA required that passenger equipment that develops a defective or insecure safety appliance continue to be subject to all the statutory restrictions on its movement. It should be noted that the proposed requirements applicable to Tier I equipment merely referenced the Railroad Safety Appliance Standards (49 CFR part 231); however, FRA proposed separate safety appliance requirements for Tier II passenger equipment.

FRA proposed that passenger equipment that is found with conditions not in compliance with this part, other than power brake defects, be moved only after a QMI has determined that the equipment is safe to move and determined any restrictions necessary for the equipment's safe movement. FRA also allowed railroads to move equipment based on an assessment made by a QMI in communication with on-site personnel. FRA proposes this based on the reality that mechanical personnel are not readily available at every location on a railroad's line of road. However, FRA further proposed that if a QMI does not actually inspect the equipment to determine that it is safe to move, then, at the first forward location where a QMI is on duty, an inspector will perform a physical inspection of the equipment to confirm the initial assessment made while in communication with on-site personnel previously.

The NPRM also required the tracking of defective equipment in either of two ways. One option was to tag the equipment in a manner similar to what is currently required under § 215.9 for freight cars. The second option was to record the specified information in an automated tracking system. The latter alternative was offered to provide railroads some flexibility and was made in recognition of advances in electronic recordkeeping.

C. Discussion of Comments on the 1997 NPRM and General FRA Conclusions

1. Movement of Equipment With Defective Brakes

Labor representatives raised several concerns, both in their written comments and at the Working Group meetings, regarding the proposed provisions related to the movement of passenger equipment with defective power brakes. These commenters objected to FRA's use of the authority granted in 49 U.S.C. 20306 to exempt passenger train operations covered by this part from the statutory requirements contained in 49 U.S.C. 20303(a)

permitting the movement of equipment with defective or insecure brakes only if various requirements are met, including the requirement that the movement for repair be only to the nearest location where the necessary repairs can be made. These commenters contend that the statutory provisions contained in 49 U.S.C. 20306 were not intended to permit FRA to waive the movement for repair provisions contained in the Safety Appliance Acts for an entire segment of the industry. Furthermore, these commenters contend that FRA is improperly relying on technological advances that exist on passenger trains to invoke the authority under 49 U.S.C. 20306 because many of the technological advances cited by FRA do not currently exist or are not currently used on a large portion of the passenger fleet. Labor representatives contend that passenger equipment which develops defective brake equipment should only be permitted to move to a location where the passengers can be off-loaded with appropriate speed restrictions.

Labor representatives also objected to FRA's statement that the term "power brake defect" does not include a failure to inspect such a component. These commenters claim that FRA's exclusion of the failure to properly inspect a brake component eliminates an important means of enforcement necessary to ensure that proper power brake inspections are performed. It is claimed that by excluding the failure to inspect from being a power brake defect, FRA has eliminated any incentive for railroads to ensure that trains have operative brakes because there will be little financial repercussion to continuing to use improperly inspected equipment. These commenters also objected to the proposed provision that requires the railroad operating long-distance intercity passenger trains to designate those location where power brake repairs will be conducted. It is claimed that by allowing the carriers to designate such locations the carrier is in absolute control of how far defective equipment will travel and abuse of the provision may occur. Labor representatives also objected to allowing railroads to use automated tracking systems to record information regarding defective equipment. These commenters believe that tagging the equipment must be required in order for inspectors to readily identify defective equipment. It is further contended that an automated tracking system is susceptible to manipulation, abuse and reduces accountability. One commenter recommended that FRA add further restrictions on the use and movement of

cars with defective brakes at the front or rear of the train.

Railroad representatives and APTA representatives did not provide many comments on the proposed provisions related to the movement of passenger equipment with defective brakes. These commenters did note that there was not a major benefit to the railroads with being able to haul certain defective equipment to the next forward terminal as proposed. These commenters did recommend that FRA provide the railroads at least two years to develop and implement the defect reporting and tracking system proposed in the NPRM.

After considering the written comments submitted and the information provided at the Working Group meetings, FRA has determined that some minor changes need to be made to the requirements proposed in the NPRM regarding the movement of equipment with defective power brakes. In order to avoid the legal implications involved with employing the statutory authority contained at 49 U.S.C. 20306 for exempting equipment from the statutory requirements related to safety appliances and power brakes, and because railroad representatives acknowledged that the flexibility provided through reliance on the exemption is minimal, FRA will not rely on the statutory exemption provision contained at 49 U.S.C. 20306 in this final rule and will modify the movement for repair provisions accordingly. FRA will retain the exemption for passenger train operations from a long-standing agency interpretation that prohibits the movement of a train for repairs under 49 U.S.C. 20303 if less than 85 percent of the train's brakes are operative. The interpretation is based on a 1910 ICC order codified at 49 CFR 232.1, FRA believes that this requirement is overly restrictive when applied to passenger train operations as many passenger operations utilize a small number of cars in their trains and the necessity to cut out the brakes on just one car can easily result in noncompliance. FRA believes that the retention of the speed restrictions contained in the proposal will fully compensate for the loss of brakes on a minority of cars. FRA rejects the BRC's recommendation that passenger trains with defective brakes be permitted to move no farther than the next passenger station because such a stringent requirement is unnecessary, more restrictive than the current statutory mandate regarding the movement of defective brake equipment, and is radically counter to the way passenger trains currently handle defective equipment.

FRA intends to retain those portions of the movement for repair requirements that are consistent with the existing statutory provisions regarding the movement of equipment with power brake defects and revise those that are contrary. Therefore, passenger trains operating with 75–99 percent operative brakes will not be permitted to travel to the next forward terminal as proposed, but will be permitted to travel only to the next forward location where the necessary repairs to the brake equipment can be effectuated as mandated in the existing statute. In FRA's view, all of the other proposed methods for moving defective power brake equipment are consistent with and are in accordance with the current statutory requirements and can be retained. For example, FRA will retain the provisions which permit a passenger train with 50–75 percent operative brakes to be moved at reduced speeds to the next forward passenger station. Although the percentage of operative brakes is lower than currently permitted by FRA's longstanding agency interpretation (which FRA believes is fully compensated for by the speed restrictions), FRA believes that the movement of the defective equipment to the next passenger station is in accordance with the statutory requirement as the safety of the passengers must be considered in determining the nearest location where necessary repairs can be made. In addition, permitting passenger trains to continue to the next forward location where the necessary repairs can be performed is also consistent with the statutory requirement as such movement is necessary to ensure the safety of the traveling public by protecting them from the hazards incident to performing movements against the current of traffic. Furthermore, retention of the movement provisions related to long-distance intercity passenger trains and long-distance Tier II equipment are consistent with the current statutory requirements as these provisions permit the movement of defective brake equipment on these trains only to the next passenger station or the next repair location, with various speed restrictions depending on the percentage of operative brakes.

FRA will also retain the requirement that operators of long-distance passenger trains designate the locations where repairs can be conducted on the equipment. Although FRA agrees that this provision puts the control of what locations constitute repair locations in the hands of the railroad, FRA believes

that the operators of these long-distance intercity trains are in the best position to determine which locations have the necessary expertise to handle the repairs of the somewhat advanced braking systems utilized in passenger trains. Due to the unique technologies used on the brake systems of these operations and the unique operating environments, the facilities and personnel necessary to conduct proper repairs on this equipment are somewhat specialized and limited. Moreover, FRA is retaining the broad performance-based requirement that railroads operating this equipment designate a sufficient number of repair locations to ensure the safe and timely repair of the equipment. Contrary to the beliefs of some labor commenters, FRA believes that this performance standard provides FRA sufficient grounds to institute civil penalty enforcement actions or take other enforcement actions if, based on its expertise and experience, FRA believes the railroad is failing to designate an adequate number of repair locations.

Rather than attempt to develop a standard applicable to all situations in the context of short-distance intercity and commuter trains, which FRA does not believe can be accomplished, FRA intends to approach the issue of what constitutes the next forward location where repairs can be effectuated based on a case-by-case analysis of each situation. FRA believes that its field inspectors are in the best position to determine whether a railroad exercised good faith in determining when and where to move a piece of defective equipment. In making these determinations both the railroad as well as FRA's inspectors must conduct a multi-factor analysis based on the facts of each case. In determining whether a particular location is a location where necessary repairs can be made or whether a location is the next forward repair location in a passenger train context, the accessibility of the location, the ability to safely make the repairs at that location, and the safety of the passengers are the overriding factors that must be considered in any analysis. These factors have a multitude of sub-factors which must be considered, such as: the type of repair required; the safety of employees responsible for conducting the repairs; the safety of employees responsible for getting the equipment to or from a particular location; the switching operations necessary to effectuate the move; the railroad's recent history and current practice of making repairs (brake and non-brake) at a particular location; relevant weather

conditions; potential overcrowding of passenger platforms; and the overcrowding of trailing trains.

FRA will also retain the requirement that equipment found with conditions not in compliance with this part must be appropriately tagged or recorded in an automated tracking system. Although FRA is sensitive to the concerns raised by labor representatives regarding the use of automated tracking systems, FRA believes that provisions must be provided to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. Although railroad and FRA inspectors may require additional training on the use of electronic records, FRA believes that the use of such a medium to track defective equipment can expedite the identification and repair of defective equipment and, thus, reduce the time that defective equipment is operated in passenger service. In response to labor's concerns, the final rule contains a provision which will give FRA the ability to monitor and review a railroad's automated tracking system and will provide FRA the ability to prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of directly tagging defective equipment if FRA finds that the automated tracking system is not properly secure, inaccessible to FRA or a railroad's employees, or fails to adequately track and monitor the movement of defective equipment. Furthermore, if the automated tracking system developed and implemented by a railroad does not accurately and adequately record the information required by this part, the railroad will be in violation of the movement for repair provisions and subject to civil penalty liability.

In response to one labor commenter's concerns, FRA is slightly modifying the provisions related to the operation of trains with defective brakes on the front or rear car. In the NPRM, FRA proposed that if the power brakes on the front or rear unit become inoperative then a qualified person must be stationed at the handbrake on the unit. See 62 FR 49797. FRA recognizes that in some instances the handbrake on a car located at the front or rear of a train may not be accessible to a member of the train crew or may be located outside the interior of the car and, thus, unsafe for a crew member to operate while the train is in motion. FRA also recognizes that in many circumstances when a car at the front or rear of the train has inoperative brakes certain speed restrictions should be placed on the train; however, FRA believes that railroads are in the best

position to determine what the appropriate speed restriction should be given the circumstances involved.

Consequently, FRA is modifying the requirements for the use of such cars and will add provisions requiring that appropriate speed restrictions be imposed and that equipment with inaccessible handbrakes or with handbrakes located outside the interior of a car be removed or repositioned in the train at the first possible location.

FRA believes that the concern raised by certain labor representatives regarding FRA's definition of "power brake defect" is due to a lack of understanding of the proposed rule as well as a misunderstanding of the current regulations. Under the current power brake regulations the unit of violation for failure to inspect is the train not individual cars, although FRA can take a separate violation for each car containing a defective condition upon departure after the train received or should have received an initial terminal inspection or for each car not identified as defective after the performance of an intermediate inspection. Moreover, the failure to inspect a piece of equipment cannot be cured through any of the proposed provisions regarding the movement of defective equipment. That is, if a railroad fails to inspect a piece of equipment as required, the railroad cannot avoid civil penalty liability by moving the equipment in accordance with the proposed provisions. Furthermore, the final rule contains specific civil penalties for a railroad's failure to perform inspections as required. Railroads will also continue to be subject to potential civil penalty for any car found in defective condition after it has performed or should have performed a Class I or Class IA brake test and any car not properly moved or identified as defective at other times. The final rule will also retain the proposed provision providing that passenger equipment will be considered "in use" prior to departure but after it has received or should have received an inspection required by this part. Thus, FRA inspectors will no longer have to wait until a piece of equipment departs a location before issuing a civil penalty, a practice continually criticized by both labor and railroad representatives.

In addition, the NPRM as well as this final rule provides FRA inspectors the ability to issue Special Notices for Repair, which enable an FRA inspector to remove an unsafe piece of equipment from service until appropriate action is taken by the railroad. See 62 FR 49790. This enforcement tool is not currently available to FRA inspectors in the area of power brakes and mechanical

components on passenger equipment and could be used in circumstances where passenger equipment is not inspected prior to being placed in service. Consequently, the final rule will not only retain all of the enforcement tools available to FRA under the current regulations but will include other methods for ensuring compliance by the railroads and provide both a financial and operational incentive for railroads to properly inspect passenger equipment.

Some of the members of the Working Group, particularly those representing labor organizations, expressed concern that any alteration of the movement for repair provisions made in the context of commuter and intercity passenger train operations may have a spillover effect into the freight industry. FRA wishes to make clear that it has no intention, at this time, of providing freight operations the flexibility to handle defective brake equipment that it is providing passenger operations. As noted above, many of the advanced brake system technologies currently used in passenger service are not used in the freight context. Furthermore, even if freight operations were to make similar advances in the braking equipment they employ, this development on the freight side may not create the efficiencies created in the passenger train context since the operating environments of freight trains and passenger trains differ significantly. More importantly, the special safety considerations relative to passengers are not present in freight operations.

2. Movement of Equipment With Other Than Power Brake Defects

Railroad representatives expressed some concerns regarding the provisions related to the movement of equipment with other than a power brake defect. The primary recommendation of these commenters was that FRA should revise the proposed provisions to require the use of a "qualified maintenance person" (qualified mechanical inspector (QMI) in the NPRM) only when a potentially safety-critical running gear defect is involved. These commenters believed that the requirement to have the car inspected by a QMP whenever a nonsafety-critical running gear component becomes defective would impose unnecessary, significant delays to their operations and is counter to current operating practices. These commenters contended that a "qualified person" as defined in the proposal would be sufficient to determine the safety implications in moving many of the mechanical components covered by the rule if they were to become defective en route. For example, it was noted that

a highly qualified inspector was not necessary to determine whether a car that experiences a defective door, cracked window, or burnt out light bulbs could or should remain in service. Railroad representatives also sought additional flexibility in the movement of equipment with a nonsafety-critical running gear defect from a calendar day mechanical inspection.

Labor representatives also raised a number of concerns with the provisions related to the movement of equipment with other than power brake defects. One concern raised by these commenters indicated that FRA should not allow railroads to determine which mechanical components are "safety-critical" as such an approach would create a massive loophole and render some of the movement restrictions unenforceable. These commenters also voiced concerns over FRA's proposal that an off-site mechanical inspector could make an assessment regarding the safety of moving a certain piece of equipment based on the communication with on-site personnel. Although these commenters appeared to recognize the flexibility provided by such an approach, they raised concerns that such an approach is ripe for abuse and would require a mechanical inspector to rely on the observation of personnel lacking the necessary training and expertise. The commenters believed that further restrictions need to be placed on these communications but they failed to specify any specific restrictions that could be utilized. Labor representatives again raised concerns over FRA's allowance of an automated tracking system in lieu of direct tagging of defective equipment. These commenters reiterated their concerns that such a system can be easily manipulated and removes accountability from the system of repairing defective equipment.

After review of the comments submitted and provided orally at the Working Group meetings, FRA has made some modest changes in the final rule regarding the movement of equipment with non-power brake defects. FRA agrees with the comments of railroad representatives that the NPRM may have been over-reaching in requiring a QMP to make a determination regarding the safety of moving a piece of defective equipment for any of the mechanical components addressed in this regulation. However, FRA also agrees with the comments submitted by labor representatives that railroads should not determine what components are considered safety-critical. Therefore, FRA will require a determination regarding the safety of moving a piece of equipment by a QMP

whenever a potential running gear defect is involved. FRA rejects the language proposed by APTA that the defect be a potentially "safety-critical" running gear defect as FRA believes that any defect to a running gear component is potentially safety-critical. In order to avoid confusion, FRA is providing an explicit definition of "running gear defect." FRA is defining the term to mean any defective condition which involves a truck component, the propulsion system, the draft system, a wheel or a wheel component. In the final rule, FRA will permit the use of a qualified person to determine the safety and establish appropriate movement restrictions on continued use of equipment which involves non-running gear defects.

FRA will also provide very limited flexibility to the railroads to operate defective equipment from a location where a calendar day mechanical inspection was performed in order to effectuate repairs. FRA intends for the calendar mechanical inspection to be as comprehensive as possible and to be the time when all defective components are identified and repaired. In order to ensure that these daily inspections are performed by highly qualified personnel, FRA has provided the railroads with considerable flexibility to perform these inspections at locations that are best suited to a quality and comprehensive inspection. Therefore, FRA will permit the movement of defective equipment from these inspection locations with very stringent restrictions. Equipment containing running gear defects may only be moved from such locations if it is not in passenger service and is in a non-revenue train. Equipment containing non-running gear defects may be moved in a revenue train provide the equipment is locked-out and empty. Any equipment moved must also be properly identified and moved in accordance with any movement restriction imposed. FRA believes these stringent movement restrictions will provide railroads limited flexibility to move defective equipment to a location where it can best be repaired but will limit a railroad's desire or ability to move defective equipment from these inspection locations and will encourage the performance of the calendar day mechanical inspections at locations where repairs to equipment can be conducted.

FRA has also retained the requirement that the QMP may make his or her determination regarding the continued use of equipment containing a potential running gear defect based on the description provided by on-site

personnel. Although FRA recognizes the concerns raised by labor representatives, FRA believes that the rule must recognize the reality of current operations and acknowledge the fact that mechanical personnel are not readily available at every location on a railroad's line of road. Furthermore, when such off-site determinations are made the rule requires that the equipment only be moved to the next forward location where the equipment can be inspected by a QMP to verify the description of the defect provided by the on-site personnel.

FRA is also adding a provision to the requirements dealing with the movement of equipment with other than power brake defects to address the inspection of roller bearings on a car whose truck is involved in a derailment. The added requirement prohibits a railroad from continuing in service a piece of passenger equipment that has a roller bearing whose truck was involved in a derailment unless the bearing is inspected and tested in accordance with the stated provisions. The added provision is identical to the requirement currently contained in 49 CFR § 215.115(b). Although the existing provision is applicable to freight cars, virtually every passenger train operation follows the provisions contained in that section prior to returning a piece of equipment to service after it was involved in a derailment and, thus, should not result in any added burden to the industry. FRA believes that the practice is critical to ensuring the proper operation of the roller bearing after a derailment occurs and should be incorporated into this final rule.

FRA also intends to make clear that the movement of equipment with a defective safety appliance will continue to be governed by the statutory provisions contained at 49 U.S.C. 20303. As noted previously this provision permits the movement of defective equipment to the nearest location where the necessary repairs can be made. The determination of what constitutes the nearest location where the necessary repairs can be effectuated in a safety appliance context is identical to the analysis required when dealing with a power brake defect. In making these determinations both the railroad as well as FRA's inspectors must conduct a multi-factor analysis based on the facts of each case. In determining whether a particular location is a location where necessary repairs can be made or whether a location is the nearest repair location in a passenger train context, the accessibility of the location, the ability to safely make the repairs at that location, and the safety of the

passengers are the overriding factors that must be considered in any analysis. These factors have a multitude of sub-factors which must be considered, such as: the type of repair required; the safety of the passengers if a move against the current of traffic is conducted; the safety of employees responsible for conducting the repairs; the safety of employees responsible for getting the equipment to or from a particular location; the switching operations necessary to effectuate the move; the railroad's recent history and current practice of making repairs (brake and non-brake) at a particular location; relevant weather conditions; potential overcrowding of passenger platforms; and the overcrowding of trailing trains. Therefore, in many circumstances trains will be permitted to continue to the next forward location where the necessary repairs can be performed as such movement is necessary to ensure the safety of the traveling public by protecting them from the hazards incident to performing movements against the current of traffic.

VIII. FRA's Passenger Train Safety Initiatives

This final rule is part of several related and complementary efforts by FRA to improve the safety of rail passenger service. FRA has issued regulations governing emergency preparedness and emergency response procedures for rail passenger service in a separate rulemaking proceeding, designated as FRA No. PTEP-1. See 63 FR 24630, May 4, 1998. FRA formed a separate working group (the Passenger Train Emergency Preparedness Working Group) to assist FRA in the development of such regulations. This related proceeding has addressed some of the issues FRA originally identified in the ANPRM on passenger equipment safety. Persons wishing to receive more information regarding this other rulemaking should contact Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, Mail Stop 25, Washington, D.C. 20590 (telephone number: 202-493-6300), or David H. Kasminoff, Esq., Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, D.C. 20590 (telephone: 202-493-6043).

Further, in response to the separate collisions involving New Jersey Transit and MARC trains in early 1996, FRA issued Emergency Order No. 20 (Notice No. 1) on February 20, 1996, requiring prompt action to immediately enhance passenger train operating rules and emergency egress and to develop an interim system safety plan addressing

the safety of operations that permit passengers to occupy the leading car in a train. 61 FR 6876, Feb. 22, 1996. Both the New Jersey Transit and MARC train collisions involved operations where a cab car occupied the lead position in a passenger train. The Emergency Order explained that in collisions involving the front of a passenger train, operating with a cab car in the forward position or a multiple unit (MU) locomotive, *i.e.*, a self-propelled locomotive with passenger seating, presents an increased risk of severe personal injury or death as compared with locomotive-hauled service when the locomotive occupies the lead position in the train and thereby acts as a buffer for the trailing passenger cars. This risk is of particular concern where operations are conducted at relatively higher speeds, where there is a mix of various types of trains, and where there are numerous highway-rail crossings over which large motor vehicles are operated. Accordingly, the Emergency Order required in particular that "railroads operating scheduled intercity or commuter rail service * * * conduct an analysis of their operations and file with FRA an interim safety plan indicating the manner in which risk of a collision involving a cab car is addressed." 61 FR 6879.

The Emergency Order also noted that there is a need to ensure that emergency exits are clearly marked and in operable condition on all passenger lines, regardless of the equipment or train control system used. Although FRA Safety Glazing Standards, 49 CFR part 223, require that passenger cars have a minimum of four emergency window exits "designed to permit rapid and easy removal during a crisis situation," the Silver Spring collision raised concerns that at least some of the occupants of the MARC train attempted unsuccessfully to exit through the windows. The Emergency Order requires "that any emergency windows that are not already legibly marked as such on the inside and outside be so marked, and that a representative sample of all such windows be examined to ensure operability." 61 FR 6880. On February 29, 1996, FRA issued Notice No. 2 to Emergency Order No. 20 to refine three aspects of the original order, including providing more detailed guidance on the emergency egress sampling provision. 61 FR 8703, Mar. 5, 1996.

In addition, FRA submitted a report to Congress on locomotive crashworthiness and working conditions on September 18, 1996, and subsequently referred the issues raised in the report to the RSAC. FRA established RSAC in March of 1996, to provide FRA with advice and

recommendations on railroad safety matters. See 61 FR 9740, Mar. 11, 1996. RSAC consists of 48 individual representatives, drawn from 27 organizations representing various rail industry perspectives, and two associate nonvoting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. In September of 1997, FRA convened the Locomotive Crashworthiness Working Group through RSAC to make recommendations as to the best way to address the findings of FRA's report to Congress, including developing standards regarding a broad range of crashworthiness issues for both passenger and freight locomotives. In the context of improving railroad communications, RSAC established a working group to specifically address communication facilities and procedures, with a strong emphasis on passenger train emergency requirements. The final rule that resulted from this effort was published on September 4, 1998, reflecting the consensus recommendations of the RSAC. 63 FR 47182.

FRA notes that, in its comments on the NPRM, Siemens Transportation Systems, Inc., (Siemens) stated that much of the safety standard changes for passenger rail cars could be scaled back if more consideration were given to the technology that is available for crash avoidance safety systems. Siemens believed the principal safety focus should be on efforts to avoid collisions in the first place, such as those at highway-rail grade crossings and with other trains.

FRA recognizes that rail passenger safety involves the safety of the railroad system as a whole. FRA does have active rulemaking and research projects in a variety of contexts, including signal and train control systems, and grade crossing safety. FRA also has existing regulations governing both railroad and grade crossing signal system safety, for example. (See 49 C.F.R. parts 233-236.) Nevertheless, this final rule is designed to address the specific statutory mandate that minimum standards be prescribed for the safety of cars used to transport railroad passengers, as noted above.

IX. Section-by-Section Analysis

This section-by-section analysis will explain the provisions of the final rule and the changes made from the 1997 NPRM. Of course, a number of the issues and provisions involving this rule have been discussed and addressed in detail in the preceding discussions. Accordingly, the preceding discussions should be considered in conjunction

with those below and will be referred to as appropriate.

Amendments to 49 CFR Part 216

Part 216 authorizes certain FRA and participating State inspectors to issue Special Notices for Repair, under specified conditions, for freight cars with defects under part 215, locomotives with defects under parts 229 or 230 or 49 U.S.C. chapter 207, and track with defects under part 213. The revisions to part 216 contained in this final rule will create a fourth category of Special Notices for Repair: for passenger equipment with defects under part 238. Consequently, if an inspector determines that noncomplying passenger equipment is "unsafe for further service" and issues a Special Notice for Repair, the railroad will be required to take the passenger equipment out of service, to make repairs to bring the equipment into compliance with part 238, and to report the repairs to FRA. The final rule also makes conforming changes to part 216 reflecting this new enforcement tool.

This final rule also includes various technical amendments to update part 216 to reflect the following: (1) Internal organizational changes within FRA; (2) the division of former part 230, Locomotive Inspection Regulations, into parts 229 and 230 and the redesignation of those portions of former part 230 related to non-steam locomotives as part 229, Railroad Locomotive Safety Standards; and (3) the repeal, reenactment without substantive change, and recodification of the Federal railroad safety laws in 1994. See 45 FR 21092, Mar. 31, 1980; Pub. L. 103-272, July 5, 1994.

Amendments to 49 CFR Parts 223, 229, 231, and 232

FRA is making conforming changes to the applicability sections of FRA's Railroad Locomotive Safety Standards, Railroad Safety Appliance Standards, and railroad power brakes and drawbars regulations that were necessitated by provisions contained in this new part 238. In this final rule, FRA has adjusted the application of provisions in parts 229, 231, or 232 or has deleted certain provisions in those parts to avoid duplication of provisions in part 238. FRA has not deleted the passenger train brake test and maintenance requirements from part 232, at this time, because part 238 will not cover certain operations subject to part 232, e.g., tourist, historic, scenic, and excursion railroad operations on the general system. Moreover, the requirements contained in part 232 will continue to apply to passenger operations until the

requirements contained in part 238 become effective to such operations. FRA is also making a technical amendment to part 223 so as to reference the additional emergency window exit and window safety glazing requirements found in part 238.

49 CFR Part 238

Subpart A—General

Section 238.1 Purpose and Scope

Paragraph (a) states the purpose of the rule to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, and the general public; and to mitigate the consequences of such occurrences to the extent they cannot be prevented. Paragraph (b) states that the regulations in this part provide minimum standards for the subjects addressed. FRA has nonetheless specified in places throughout the regulatory text that the prescribed requirements are only minimum standards so as to reinforce this principle. Railroads and other persons subject to this part may adopt and enforce more stringent requirements, so long as they are not inconsistent with this part.

Paragraph (c) contains the dates upon which railroads covered by this part will be required to comply with the requirements contained in this final rule related to the inspection, testing, maintenance, training, and movement of defective equipment. FRA recognizes the interrelationship between the proper training of railroad personnel and the implementation of the inspection, testing, maintenance and movement of defective equipment provisions contained in the final rule. FRA realizes that in order for railroads to comply with the requirements related to the inspection, testing, and maintenance requirements and the requirements regarding the movement of defective equipment, the railroads must first be provided a sufficient amount of time to develop and implement a proper training program. Based on information received by FRA, it appears that many railroads are in the initial stages of developing training programs or modifying existing programs to meet the requirements of this final rule and that this process should be completed within a year. After the development of the training programs the railroads will need several months to a year to rotate their employees through the programs in order not to disrupt the operation of their railroads. Thus, FRA believes that 26 months is a sufficient amount of time for railroads to develop and train their

employees as required by this final rule. Consequently, FRA will require compliance with the inspection, testing, and maintenance provisions as well the movement of defective equipment provisions after that same 26 month period.

FRA also recognizes that there are certain aspects of the inspection, testing, and maintenance requirements as well as the movement of defective equipment provisions that provide operational flexibility to the railroads. Due to this flexibility, FRA believes that some railroads will desire the ability to begin operations under the inspection, testing, and maintenance requirements and the movement of defective equipment provisions as soon as their employees have been properly trained. Therefore, FRA has included provisions which allow a railroad to notify FRA in writing that it is willing to begin compliance with the inspection, testing, and maintenance requirements and the movement of defective equipment provisions some time earlier than the 26 months provided. FRA wishes to make clear that it does not intend for railroads to take advantage of the flexibility provided under some of the provisions unless the railroad is willing to comply with all the requirements contained in those provisions. Thus, in order to begin operating under any of the provisions contained in subpart D, except the maintenance requirements contained in §§ 238.309 and 238.311, or to operate defective equipment under §§ 238.15 or 238.17, the railroad must be performing all of the requirements contained in those sections and that subpart.

As the maintenance requirements regarding the periodic performance of COT&S and the performance of single car tests, contained in §§ 238.309 and 238.311, are separable from the inspection requirements, FRA will permit railroads to request earlier application of those two sections. However, in order to begin operation under either of these two sections, the railroad must be willing to operate in accordance with all of the provisions in both sections. That is, the provisions contained in §§ 238.309 and 238.311 must be implemented as a package and cannot be implemented separately, except for the requirements related to the performance of COT&S on locomotives. This paragraph makes clear that the requirements related to the performance of COT&S on MU locomotives and conventional locomotives will become effective September 9, 1999. As discussed in more detail in the section-by-section analysis of § 238.309, FRA believes that the extensions of COT&S contained in

paragraphs (b) and (c) of § 238.309 are supported either by the tests conducted by Metro-North or are a practice that has been approved by waiver for several years. Furthermore, there is no corresponding single car testing requirement applicable to MU and conventional locomotives.

As a point of clarification, FRA makes clear that a railroad will be subject to compliance under the existing inspection, testing, and maintenance provisions contained in part 232 of this chapter until the railroad is required to operate under the inspection and testing provisions of this part (i.e., 26 months) or until the railroad voluntarily commits to operate under the provisions of this part.

Section 238.3 Application

As a general matter, in paragraphs (a)(1) and (a)(2), the rule applies to all railroads that operate intercity passenger train service on the general railroad system of transportation or provide commuter or other short-haul passenger train service in a metropolitan or suburban area; that is, the rule applies to commuter or other short-haul passenger described in paragraph (a)(2) regardless of whether that service is connected to the general railroad system. A public authority that indirectly provides passenger train service by contracting out the actual operation to another railroad or independent contractor would be regulated by FRA as a railroad under the provisions of this rule. In order to avoid confusion, FRA has omitted proposed paragraph (a)(3) regarding the rule's applicability to rapid transit operations as these types of operations, which are merely a subset of "commuter or other short-haul rail passenger train service," are sufficiently covered under paragraphs (a)(1) and (a)(2) in the final rule. Paragraph (b) makes explicit the liability imposed by statute, 49 U.S.C. 20303, on a railroad that owns track over which another railroad hauls or uses equipment with a power brake or safety appliance defect. Under paragraph (b), a railroad that permits operations over its trackage by passenger equipment subject to this part that does not comply with a power brake provision of this part or a safety appliance provision of this part is subject to the power brake and safety appliance provisions of this part with respect to such operations that it permits.

This section contains no explicit reference to private cars. Rather than addressing the scope of applicability of part 238 to private cars in this section, FRA has indicated in the particular

substantive sections of the rule whether private cars are covered, according to the terms of those sections. FRA has applied certain requirements of the rule to private cars that operate on railroads subject to this part. FRA has taken into account the burden imposed by requiring private car owners and operators to conform to the requirements of this part. Further, FRA recognizes that private cars are often hauled by railroads such as Amtrak and commuter railroads which often impose their own safety requirements on the operation of the private cars. Accordingly, FRA has limited the application of the rule only to those requirements necessary to ensure the safe operation of the passenger train that is hauling the private car. For instance, private cars are subject to brake inspection, testing, and maintenance requirements.

The rule is structured to apply to intercity, commuter and other short-haul service, but not to tourist, scenic, historic, and excursion operations. The term "tourist, scenic, historic, or excursion operations" is defined in § 238.5 to mean "railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose." The term refers to the particular physical operation, not to the nature of the railroad company as a whole that conducts the operation. As a result, part 238 exempts not only a recreational train ride by a tourist railroad company that employs five people but also a recreational train ride by the Union Pacific Railroad Company, a Class I freight railroad. FRA has not yet had the opportunity to fully consult with tourist and historic railroad operators and their associations to determine the appropriate applicability of the provisions contained in this final rule to such railroad operations. The Federal Railroad Safety Authorization Act of 1994 directs FRA to examine the unique circumstances of tourist railroads when establishing safety regulations. The Act, which amended 49 U.S.C. 20103, states that:

In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

Pub. L. 103-440, § 217, 108 Stat. 4619, 4624, November 2, 1994. In its 1996 report to Congress entitled "Regulatory

Actions Affecting Tourist Railroads," FRA responded to the direction in the statutory provision and also provided additional information related to tourist railroad safety for consideration of the Congress.

Section 215 of the 1994 Act specifically permits FRA to exempt equipment used by tourist, historic, scenic, and excursion railroads to transport passengers from the initial regulations required to be prescribed by November 2, 1997. 49 U.S.C. 20133(b)(1). FRA is addressing the passenger equipment safety concerns for these unique types of operations through the Tourist and Historic Railroads Working Group formed under RSAC. Any requirements applicable to these operations will be part of a separate rulemaking proceeding.

FRA notes that the Syracuse, Binghamton and New York Railroad Corporation (SBNY) commented on the application of the rule to its passenger shuttle and excursion service on approximately ten miles of trackage shared with rail freight traffic in the city of Syracuse and county of Onondaga, New York. SBNY commented that, although it understands its excursion service would be exempt from the rule, its shuttle operations appear to fall directly within the proposed regulation. SBNY believed that applying the proposed regulations to its shuttle service would impose a significant and unbearable burden with little if any improvement in safety. SBNY asked that the rule expressly except from its application passenger train operations on track that is limited to operating speeds of 30 mph or less.

FRA believes the SBNY is properly characterized as a commuter or other short-haul railroad subject to this part. FRA has not adopted SBNY's recommendation to change the application of the final rule so as to except passenger train operations on track that is limited to operating speeds of 30 mph or less. First of all, any such operation must already comply with existing regulations affecting railroad passenger equipment safety, such as the locomotive safety standards (49 C.F.R. part 229), and standards on railroad power brakes and drawbars (49 C.F.R. part 231). Second, many provisions of the final rule itself cannot logically be distinguished in any manner on the basis of operating speed. For instance, materials in locomotives and passenger cars should be required to comply with the testing standards for flammability and smoke emissions characteristics to protect against sources of ignition—no matter the operating speed of the equipment. Finally, FRA notes that

SBNY operates conventional diesel multiple-unit passenger equipment built to AAR standards. Accordingly, the railroad should not experience burdens related to structural standards. If there are unique factors present with regard to SBNY's equipment, the waiver process may provide a way of accommodating those differences.

The requirements of this rule do not apply to circus trains. In its comments on the NPRM, Feld Entertainment, Inc., (Feld), parent company of Ringling Bros. and Barnum & Bailey circus (Ringling Bros.), supported the rule's consideration of the special circumstances of certain classes of rail carriers, such as private passenger cars and circus trains. Feld stated on behalf of Ringling Bros. that it suspended the use of rim-stamped straight-plate wheels on its tread-braked passenger cars following the 1994 derailment of a circus train in Lakeland, Florida. See 62 FR 49743. Feld also stated that Ringling Bros. takes seriously its commitment to the safety of its employees and animals. FRA anticipates deferring further consideration of applying any of the requirements in this final rule to circus trains to the Tourist and Historic Railroads Working Group.

Section 238.5 Definitions

This section contains a set of definitions to introduce the regulations. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the rule. Several of the definitions involve new or fundamental concepts which require further discussion.

"Brake indicator" means a device, actuated by brake cylinder pressure, which indicates whether brakes are applied or released on a car. The use of brake indicators in the performance of brake tests is a controversial subject. Rail labor organizations correctly maintain that brake indicators are not fully reliable indicators of brake application and release on each car in the train. Further, railroads correctly maintain that reliance on brake indicators is necessary because inspectors cannot always safely observe brake application and release. FRA believes that brake indicators serve an important role in the performance of brake tests. FRA has specified three different types of brake tests—Class I, Class IA, and Class II (described below)—that must be performed on passenger equipment. Railroads should perform Class I brake tests so that the inspector is able to actually observe brake application and release. However, FRA believes that during the performance of a Class IA brake test,

railroads may rely on brake indicators if they determine that the inspector cannot safely make a direct observation of the brake application or release.

"Primary brake" and "secondary brake" are complementary definitions. "Primary brake" refers to "those components of the train brake system necessary to stop the train within the signal spacing distance without thermal damage to friction braking surfaces," while "secondary brake" refers to "those components of the train brake system which develop supplemental brake retarding force that is not needed to stop the train within signal spacing distances or to prevent thermal damage to wheels." FRA provides these definitions to help draw the line between safety and economics of brake systems. Railroads have long held that the dynamic portion of a blended brake is not a safety system. Under the provisions in this final rule, railroads must demonstrate through testing and analysis that the dynamic brake fits the definition of a secondary brake. Defective primary braking systems are a serious safety problem that railroads must address immediately. Defective secondary braking systems, as defined in § 238.5, are not a serious safety concern, because, by definition, their failure does not result in unacceptable thermal inputs into friction brake components. Accordingly, FRA intends to allow railroads more flexibility in dealing with defective secondary braking systems.

Three brake tests are fundamental to this final rule. A "Class I brake test" means a complete passenger train brake system test as further specified in § 238.313. The Class I test is the most complete test. It must be performed once each calendar day that a passenger train is in service by a qualified maintenance person. The Class I test is intended to replace the current initial terminal brake test. See 49 CFR 232.12(c)-(j). The Class I test is much more tailored to the specific designs of passenger equipment than the initial terminal brake test that is required now.

A "Class IA brake test" means a test and inspection (as further specified in § 238.315) of the air brake system on each car in a passenger train to ensure the air brake system functions as intended in response to the command sent through the train line. The Class IA test is a somewhat less complete test than the Class I test and is intended to be very similar to the current 1,000-mile brake test. An important difference between the Class I and Class IA tests is that the Class IA test may be performed by qualified persons as long as they have been properly trained and

designated by the railroad to perform the inspection. The Class IA test allows commuter railroads the flexibility to have trains depart their first run of the day from an outlying point without having to station qualified maintenance persons at all outlying points. If railroads take advantage of the flexibility offered by the Class IA test, they must follow-up with a Class I test sometime during the day.

A "Class II train brake test" means a test (as further specified in § 238.317) of brake pipe integrity and continuity from controlling locomotive to rear car. The Class II brake test is a simple set-and-release test intended to replace the passenger train intermediate terminal air brake test. See 49 CFR 232.13(b). The Class II test is also tailored to the special design of the passenger equipment.

The concept of "ordered" is vital to the correct application of this final rule. As applied to the acquisition of equipment, the term means that the acquiring entity has given a notice to proceed to manufacture the equipment that represents a firm financial commitment to compensate the manufacturer for the contract price of the equipment or for damages if the order is nullified. Equipment is not ordered if future exercise of a contract option is required to place the remanufacturing process in motion. Many of the provisions of this final rule, particularly structural requirements, will apply only to newly constructed equipment. When FRA applies certain requirements only to passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, FRA intends to "grandfather" in this regard any equipment that is both ordered before September 8, 2000, and placed in service for the first time before September 9, 2002. FRA believes this approach will allow railroads to minimize, or avoid altogether, any costs associated with changes to existing orders and yet limit the delay in realizing the safety benefits of the requirements in this rule.

FRA's definition of "passenger car" goes beyond its traditional meaning. "Passenger car" means rail rolling equipment intended to provide transportation for members of the general public and includes a self-propelled car designed to carry passengers, baggage, mail, or express. This term includes a cab car, an MU locomotive, and a passenger coach. A cab car and an MU locomotive are also a "locomotive" under this rule. In the context of articulated equipment, "passenger car" means that segment of the rail rolling equipment located

between two trucks. This term does not include a private car. "Passenger coach" means rail rolling equipment intended to provide transportation for members of the general public that is without propelling motors and without a control stand; therefore, passenger coaches are a subset of passenger cars. "Control stand" is defined in *The Railroad Dictionary of Car and Locomotive Terms* (Simmons-Boardman Publishing Corp. 1980), as "[t]he upright column upon which the throttle control, reverser handle, transition lever, and dynamic braking control are mounted within convenient reach of the engineer on a locomotive. The air gauges and some switches are also included on the control stand."

"Passenger equipment" is the most inclusive definition. It means all powered and unpowered passenger cars, locomotives used to haul a passenger car, and any other rail rolling equipment used in a train with one or more passenger cars. "Passenger equipment" includes a (1) passenger coach, (2) cab car, (3) MU locomotive, (4) locomotive not intended to provide transportation for members of the general public that is used to power a passenger train, and (5) any non-self-propelled vehicle used in a train with one or more passenger cars. The term therefore covers a baggage car, express car, freight car, mail car or a private car when used in a train with one or more passenger cars. In the context of articulated equipment, "passenger equipment" means that segment of rail rolling equipment located between two trucks that is used in a train with one or more passenger cars. However, this term does not include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

It should be noted that the definition of passenger equipment has been somewhat modified from that which was proposed in the NPRM. See 62 FR 49794. The change in the definition is based on comments from the AAPRCO and the American Short Line Railroad Association (ASLRA), and clarifies FRA's intent with regard to private cars. Under the final rule, FRA makes clear that a private car is considered "passenger equipment" for purposes of this rule only when it is used in a train with one or more passenger cars. Consequently, a private car will not be considered "passenger equipment" under the rule when the private car is being used alone; or used in a train consisting only of private cars or freight cars, or both. This approach is consistent with FRA's intent in drafting the NPRM, and fully incorporates the AAPRCO's and ASLRA's comments.

FRA has also modified the definition of "passenger equipment" so that the term does not include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive. At the Working Group meeting in December, 1997, the AAR had raised the concern that the proposed rule did not provide an exclusion for a freight locomotive used to haul a passenger train for relief purposes. FRA believes that a limited exception is warranted for a freight locomotive used to haul a passenger train due to the failure of the passenger train's own motive power; FRA does not wish for the passenger train to be stranded. FRA has modified the definition of the term "locomotive" accordingly in this final rule.

In the context of articulated equipment, FRA has clarified that "passenger equipment" means that segment of rail rolling equipment located between two trucks that is used in a train with one or more passenger cars. In the NPRM, FRA had used similar language in the definition of "unit" (see 62 FR 49796). Since the definition of "unit" itself draws upon the definition of "passenger equipment," FRA has decided to insert this clarifying language here.

The terms "passenger station" and "terminal" are crucial to understanding the requirements related to the inspection of equipment and the movement of defective equipment contained in this final rule. "Passenger station" means a location designated in the railroad's timetable where passengers are regularly scheduled to get on or off any train. Under certain carefully controlled conditions, the rule permits a passenger train with defective equipment to move to the next forward passenger station. This flexibility is allowed to prevent railroads from discharging passengers in potentially unsafe locations and to minimize schedule impacts where this can safely be done. By contrast, "terminal" means a train's starting point or ending point of a single scheduled trip, where passengers may embark or disembark a train; normally, a "terminal" is a point where the train would reverse direction or change destinations.

The concepts of "qualified person" and "qualified maintenance person" are vital to understanding the required inspection, testing, and maintenance provisions of the rule. A "qualified person" is a person determined by the railroad to have the knowledge and skills necessary to perform one or more functions required under this part. With the proper training, a train crewmember could be a qualified person.

A "qualified maintenance person" is a "qualified person" who as a part of the training, qualification, and designation program required under § 238.111 has received instruction and training that includes "hands-on" experience (under appropriate supervision or apprenticeship) in one or more of the following functions: trouble-shooting, inspection, testing, maintenance or repair of the specific train brake and other components and systems for which the inspector is assigned responsibility. This person shall also possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which the person is assigned responsibility. Further, the qualified maintenance person shall be a person whose primary responsibility includes work generally consistent with the above-referenced functions and is designated to: (1) conduct Class I brake tests under this part; (2) conduct exterior calendar day and periodic mechanical inspections on MU locomotives or other passenger cars and unpowered vehicles under this part; or (3) determine whether equipment not in compliance with this part may be moved as required by § 238.17.

As noted in detail in the preceding general preamble discussion, FRA is slightly modifying the terminology and definition of these highly qualified inspectors from that proposed in the 1997 NPRM in order to address the concerns by some commenters and to clarify the definition as much as possible. In the 1997 NPRM, FRA proposed the term "qualified mechanical inspector" (QMI) to describe these highly qualified inspectors. FRA recognizes the concern raised by some commenters, that the term QMI might result in employees designated as such to seek some sort of premium pay status. Although FRA is not overly swayed by this concern, FRA is changing the term in the manner suggested by these commenters to "qualified maintenance person (QMP)." FRA believes that the term used to describe the individual responsible for conducting certain brake and mechanical inspections has little bearing on the qualifications or knowledge of the individual and, thus, is not adverse to accommodating a change in the term. However, but for clarifying language, FRA is not changing the underlying definition of what is required to be designated as a QMP.

The definition contained in this final rule clarifies the intent of the NPRM by specifically stating that a QMP must be properly trained and have a primary responsibility in the function of trouble-shooting, inspection, testing,

maintenance, or repair of the specific train brake and other components and systems for which the inspector is assigned responsibility. The slightly modified definition also clarifies that a QMP also possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which the person is assigned responsibility.

The major concern raised by APTA representatives centered on the requirement contained in the definition of a QMI that the person's "primary responsibility" include work in the area of troubleshooting, testing, inspecting, maintenance, or repair to train brake systems and other components. These commenters believed that anyone who is properly trained can perform the required inspections regardless of the amount of time actually spent engaged in the activity. The entire concept of QMP (or QMI) is premised on the idea that flexibility in the inspection of passenger equipment, flexibility in the movement of defective equipment and slight reductions in periodic maintenance could be provided if the mechanical components and brake system were inspected on a daily basis by highly qualified individuals. Thus, the requirement that a highly qualified person perform certain brake and mechanical inspections is part of a package which includes flexibility in the performance of brake and mechanical inspections, permits wider latitude in the movement of defective equipment, and provides reductions in the periodic maintenance that is required to be performed on certain equipment. Therefore, FRA expects the highly qualified person to be an individual who can not only identify a particular defective condition but who will have the knowledge and experience to know how the defective condition affects other mechanical components or other parts of the brake system and will have an understanding of what might have caused a particular defective condition. FRA believes that in order for a person to become highly proficient in the performance of a particular task that person must perform the task on a repeated and consistent basis. As it is almost impossible to develop and impose specific experience requirements, FRA believes that a requirement that the person's primary responsibility be in one or more of the specifically identified work areas and that the person have a basic understanding of what is required to properly repair and maintain safety-critical brake or mechanical components

is necessary to ensure the high quality inspections envisioned by the rule. FRA notes the frequent contention of railroad representatives that mechanical forces are intimately familiar with the vehicles in the fleet for which they are responsible. FRA wishes to continue this record of careful attention to those fleets, which will tend to help ensure that developing problems are identified early and are dealt with across those fleets.

FRA disagrees with the contentions raised by APTA representatives that the definition of QMP violates the Administrative Procedure Act and exceeds FRA's statutory authority. Contrary to the assertions made by APTA representatives, the administrative record together with FRA's independent knowledge of the passenger rail industry do support a requirement that only a QMP conduct Class I brake tests and exterior mechanical inspections. Except for limited weekend service operated by Metra, virtually every passenger train operation affected by this rule currently conducts daily brake and mechanical inspections utilizing employees who, except for training on the requirements of this rule, would meet the definition of a QMP. That is, the employees who are currently responsible for conducting the major daily brake and mechanical inspections on virtually all passenger trains meet the "primary responsibility" requirement contained in the definition of QMP. Therefore, the industry's current practice acknowledges and supports the need to conduct daily inspections with employees whose primary responsibility is the troubleshooting, inspection, testing, maintenance, or repair of train brake systems or other mechanical components. Furthermore, due to the flexibility provided in this rule for conducting brake and mechanical inspections and moving defective equipment as well as the extension of certain periodic maintenance, FRA believes that the current best practices of the railroads with regard to brake and mechanical inspections must be maintained, especially as it relates to the quality of the personnel performing the inspections.

FRA further believes that APTA's contention that the definition of QMP violates the Railway Labor Act is due to a misunderstanding of the definition. FRA is not attempting to make any determinations over employee classes or crafts or to interpret collective bargaining agreements. As was made clear in the 1997 NPRM, the definition would allow the members of trades associated with testing and maintenance

of equipment such as carmen, machinists, and electricians to become QMPs. However, membership in a labor organization or completion of an apprenticeship program associated with a particular craft is not required. FRA makes clear that the two overriding qualifications are possession of the knowledge required to do the job and a primary work assignment involving the troubleshooting, inspecting, testing, maintaining, or repairing the equipment.

FRA is also clarifying the meaning of "primary responsibility" as used in the definition of QMP. As a rule of thumb FRA will consider a person's "primary responsibility" to be the task that the person performs at least 50 percent of the time. Therefore, a person who spends at least 50 percent of the time engaged in the duties of inspecting, testing, maintenance, troubleshooting, or repair of train brakes systems and other mechanical components could be designated as a QMP, provided the person is properly trained to perform the tasks assigned and possesses a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which the person is assigned responsibility. However, FRA will consider the totality of the circumstances surrounding an employee's duties in determining a person's "primary responsibility." For example, a person may not spend 50 percent of his or her day engaged in any one readily identifiable type of activity; in those situations FRA will have to look at the circumstances involved on a case-by-case basis.

The definition of QMP largely rules out the possibility of train crew members from being designated as these highly qualified inspectors since the primary responsibility, as defined above, of virtually all current train crew personnel is the operation of trains, and for the most part, train crew personnel do not possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components that are inspected during Class I brake tests or exterior calendar day mechanical inspections. However, contrary to the contentions raised by APTA there is nothing in the rule which prevents a railroad from utilizing employees who are not designated as QMPs from conducting brake and mechanical inspections provided those inspections are not intended to constitute the required Class I brake test or the exterior calendar day mechanical inspection. Furthermore, the rule provides that certain required brake and mechanical

inspections (Class IA brake tests, Class II brake tests, running brake tests, and interior calendar day mechanical inspections) may be performed by a properly "qualified person" and do not mandate the use of a QMP. FRA believes that these are the types of inspections which train crew members are currently assigned to perform and have been performing effectively for years. Consequently, FRA believes that the inspection requirements and the qualification requirements contained in this rule are merely a codification of the current best practices of the passenger train industry and are necessary to ensure the continued safety of those operations while providing the industry some flexibility in the performance of certain inspections and in the movement of defective equipment as well as providing slight increases in periodic maintenance for some equipment.

The term "running gear defect" has been added to the final rule's list of definitions. A running gear defect is defined as any defective condition which involves a truck component, a propulsion system component, a draft system component, a wheel or a wheel component. This term is important for understanding the restrictions regarding the movement of equipment with other than power brake defects. FRA agrees with the comments of railroad representatives that the 1997 NPRM may have been over-reaching in requiring a qualified mechanical inspector to make a determination regarding the safety of moving a piece of defective equipment for any of the mechanical components addressed in this regulation. However, FRA also agrees with the comments submitted by labor representatives that railroads should not determine what components are considered safety-critical. Therefore, FRA has modified the movement of defective equipment provisions in this final rule to require a determination regarding the safety of moving a piece of equipment by a qualified maintenance person (as discussed above) whenever a potential running gear defect is involved. FRA rejects the language proposed by APTA that the defect be a potentially "safety-critical" running gear defect as FRA believes that any defect to a running gear component is potentially safety-critical. In order to avoid confusion, FRA is providing an explicit definition of running gear defect. In the final rule, FRA is permitting the use of a qualified person to determine the safety and establish appropriate movement restrictions on

continued use of equipment which involves non-running gear defects.

Definitions of the various types of trains covered by this final rule are extremely important to understand how FRA intends for the rule to be applied. The most general definition is that of a "passenger train." The definition makes two points very clear. First, the final rule does not apply to tourist and excursion railroads; and, second, the provisions of the rule do apply to non-passenger carrying units included in a passenger train.

An important distinction highlighted in these definitions is the difference between a "long-distance intercity passenger train" and a "short-distance intercity passenger train." "Long-distance intercity passenger train" means a passenger train that provides service between large cities more than 125 miles apart and is not operated exclusively in the National Railroad Passenger Corporation's (Amtrak) Northeast Corridor between Washington D.C. and Boston, Massachusetts. "Short-distance intercity passenger train" means a passenger train that provides service exclusively on the Northeast Corridor or between cities that are not more than 125 miles apart. This distinction attempts to recognize the special set of operating conditions on the Northeast Corridor in light of the need to treat long-distance trains differently than short-distance trains. Additionally, APTA advised FRA that there are commuter rail systems that operate trains over 100 miles in distance on a single run, and thus recommended the use of the 125-mile distance in these definitions.

The definition of the term "in service" is modeled after the definition of that term in the Railroad Freight Car Safety Standards. See 49 CFR 215.5(e). Passenger equipment that is in service includes passenger equipment "in passenger service," meaning "carrying, or available to carry, fare-paying passengers," as well as all other passenger equipment unless it falls into one of the following four categories:

- (a) Is being handled in accordance with §§ 238.15, 238.17, 238.305(c)(5), or 238.503(f), as applicable;
- (b) Is in a repair shop or on a repair track;
- (c) Is on a storage track and is not carrying passengers; or
- (d) Has been delivered in interchange but has not been accepted by the receiving railroad.

The term "in service" is important because if the train or passenger equipment is not in service, it is not subject to a part 238 civil penalty.

FRA has revised the definition of "skin" to reflect more appropriately its

meaning in the broad sense as the outer covering of a fuel tank and a rail vehicle as a whole, not just the forward-facing end of a locomotive. Moreover, as noted below in the discussion of § 238.209 (Forward-facing end structure of locomotives), the exclusion from the definition of "skin" originally included as part of the definition itself proposed in the NPRM has instead been incorporated into the appropriate rule text for clarity at § 238.209 and § 238.409 (Forward end structures of power car cabs).

The last definition that warrants discussion is "vestibule." FRA intends "vestibule" to mean an area of a passenger car that normally does not contain seating and that is used for passage between the seating area and the side exit doors. The definition of "vestibule" is important to determine the requirements for side door emergency-release mechanisms. For instance, a powered side door in a vestibule that is partitioned to the passenger compartment of a Tier I passenger car must have a manual override feature as specified in § 238.235 by December 31, 1999.

Section 238.7 Waivers

This section sets forth the procedures for seeking waivers of compliance with the requirements of this rule. Requests for such waivers may be filed by any interested party. In reviewing such requests, FRA conducts investigations to determine if a deviation from the general criteria can be made without compromising or diminishing rail safety. This section has been modified from that proposed in the 1997 NPRM to keep it consistent with the general waiver provisions contained in other Federal regulations issued by FRA. FRA recognizes that circumstances may arise when the operation of passenger equipment that does not meet the standards contained in this rule is appropriate and in the public interest.

Section 238.9 Responsibility for Compliance

General compliance requirements are contained in this section. Paragraph (a). Paragraphs (a)(1) and (a)(2) prohibit a railroad subject to part 238 from committing a series of specified acts with respect to a train or a piece of passenger equipment while the train or passenger equipment is in service if it has a condition that does not comply with part 238 or if it has not been inspected and tested as required by part 238. In particular, consistent with 49 U.S.C. chapter 203, paragraph (a)(1) imposes a strict liability standard with respect to violations of the safety

appliance and power brake provisions of part 238. In addition to the acts prohibited by paragraph (a)(2) (that is, the use, haul, offering in interchange, or accepting in interchange of defective or not properly inspected equipment), paragraph (a)(1) prohibits a railroad from merely permitting the use or haul on its line of such equipment if it does not conform with the safety appliance and power brake provisions. See § 238.3(b). By contrast, paragraph (a)(2) imposes a lower standard of liability for using, hauling, delivering in interchange, or accepting in interchange a train or passenger equipment that is defective or not properly inspected, in violation of another provision of this part; a railroad subject to this part is liable only if it knew, had notice, or should have known of the existence of either the defective condition of the equipment or the failure to inspect and test. Finally, paragraph (a)(3) establishes a strict liability standard for noncompliance with any other provision of this part.

Paragraph (b). In accordance with the "use" or "haul" language previously contained in the Safety Appliance Acts (49 U.S.C. chapter 203) and with FRA's general rulemaking authority under the Federal railroad safety laws, FRA in paragraph (b) makes clear that passenger equipment will be considered "in use" prior to departure but after it receives or should have received the necessary tests and inspections required for movement. FRA will no longer wait for a piece of equipment with a power brake defect to be hauled before issuing a violation, a practice frequently criticized by the railroads. FRA believes that this approach will increase FRA's ability to prevent the movement of defective equipment that creates a potential safety hazard to both the public and railroad employees. FRA does not feel that this approach increases the railroads' burden since equipment should not be operated if it is found in defective condition in the pre-departure tests and inspections, unless permitted by the regulations.

Paragraph (c). This paragraph clarifies FRA's position that the requirements contained in this final rule are applicable not only to any "railroad" subject to this part but also to any "person," as defined in § 238.5, that performs any function required by this final rule. Although various sections of the final rule address the duties of a railroad, FRA intends that any person who performs any action on behalf of a railroad or any person who performs any action covered by the final rule is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action.

For example, private car owners and contract shops that perform duties covered by these regulations would be required to perform those duties in the same manner as required of a railroad.

Section 238.11 Civil Penalties

This section identifies the civil penalties that FRA may impose upon any person, including a railroad or an independent contractor providing goods or services to a railroad, that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21302, and 21304. The penalty provision parallels penalty provisions included in numerous other safety regulations issued by FRA. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least \$500 and not more than \$11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed \$22,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Furthermore, 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 the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved. The final rule includes a schedule of civil penalties as appendix A to this part. Because the penalty schedule is a statement of policy, notice and comment was not required prior to its issuance. See 5 U.S.C. 553(b)(3)(A).

It should be noted that this section has been modified slightly from that proposed in the 1997 NPRM. The modifications were made to address the statutory requirements contained in the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, April 26, 1996, which required agencies to adjust for inflation the maximum civil monetary penalties within the agencies' jurisdiction. Consequently, the resulting \$11,000 and \$22,000 maximum penalties were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

Section 238.13 Preemptive Effect

Section 238.13 informs the public as to FRA's views regarding what will be the preemptive effect of the final rule. While the presence or absence of such a section does not in itself affect the preemptive effect of a final rule, it informs the public about the statutory provision which governs the preemptive effect of the 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 in this final rule.

Section 238.15 Movement of Passenger Equipment With Defective Power Brakes

This section contains the requirements for movement of passenger equipment with a power brake defect without civil penalty liability under this part. (Railroads remain liable, however, "in a proceeding to recover damages for death or injury of a railroad employee arising from the movement of" the defective equipment. See 49 U.S.C. 20303(c).) A "power brake defect," as defined in paragraph (a), "is a condition of a power brake component, or other primary brake component, that does not conform with this" rule. The term does not include a failure to properly inspect such a component.

Labor representatives objected to FRA's determination that the term "power brake defect" does not include a failure to inspect such a component. These commenters claim that FRA's exclusion of the failure to properly inspect a brake component eliminates an important means of enforcement necessary to ensure that proper power brake inspections are performed. It is claimed that by excluding the failure to inspect from being a power brake defect, FRA has eliminated any incentive for railroads to ensure that trains have operative brakes because there will be little financial repercussion to continuing to use improperly inspected equipment.

FRA believes that the concern raised by certain labor representatives regarding FRA's definition of "power brake defect" under this section is due to a lack of understanding of the rule as

well as a misunderstanding of the existing regulations. Under the current power brake regulations the unit of violation for failure to inspect is the train not individual cars, although FRA can take a separate violation for each car containing a defective condition upon departure after the train received or should have received an initial terminal inspection or for each car not identified as defective after the performance of an intermediate inspection. Moreover, the failure to inspect a piece of equipment cannot be cured through any of the provisions contained in this final rule regarding the movement of defective equipment. Thus, if a railroad fails to inspect a piece of equipment as required, the railroad cannot avoid civil penalty liability by moving the equipment in accordance with the movement for repair provisions. Furthermore, the final rule contains specific civil penalties for a railroad's failure to perform inspections as required. Therefore, railroads will also continue to be subject to potential civil penalty for any car found in defective condition after it has performed or should have performed a Class I or Class IA brake test, and for any car not properly moved or identified as defective at other times.

The final rule also retains the provision stating that passenger equipment will be considered "in use" prior to departure but after it has received or should have received an inspection required by this part. See § 232.9. Thus, FRA inspectors will no longer have to wait until a piece of equipment departs a location before issuing a civil penalty, a practice continually criticized by both labor and railroad representatives. In addition, this final rule provides FRA inspectors the ability to issue Special Notices for Repair, which enable an FRA inspector to remove an unsafe piece of equipment from service until appropriate action is taken by the railroad. See Amendments to 49 CFR part 216. This enforcement tool is not currently available to FRA inspectors in the area of power brakes and mechanical components on passenger equipment and could be used in circumstances where passenger equipment is not inspected prior to being placed in service. Consequently, the final rule not only retains all of the enforcement tools available to FRA under the current regulations but includes other methods for ensuring compliance by the railroads and provides both a financial and operational incentive for railroads to properly inspect passenger equipment.

Paragraph (b)(1). This paragraph addresses the movement for repair of

equipment with a power brake defect found during a Class I or IA brake test or, for Tier II equipment, the equivalent of a Class I or IA brake test. This paragraph allows railroads the flexibility to move passenger equipment with a power brake defect found during such a test if the following three conditions are satisfied: (1) If the train is moved for purposes of effecting repair of the defect, without passengers; (2) the applicable operating restrictions set forth in paragraph (d) are complied with; and (3) the information concerning the defect is recorded on a tag affixed to the equipment or in an automated defect tracking system as specified in paragraph (c)(2).

Paragraph (b)(2). This paragraph permits railroads to move, for purposes of scrapping or sale, passenger equipment with a power brake defect found during a Class I or IA brake test (or the Tier II equivalent) if each of the following conditions is satisfied: if the movement is without passengers, if the speed of the movement is 15 mph or less, and if the railroad's air brake or power brake instructions are followed when making the movement. This provision allows railroads to move surplus equipment without having to request permission for one-time moves from FRA, as is currently required. FRA has not had any serious safety concerns with the methods currently used by railroads to move this equipment and does not believe its limited resources should be tied up in approving these types of moves.

Paragraph (c), generally. This paragraph addresses the use of passenger equipment with a power brake defect that develops en route from a location where a Class I or IA brake test (or the Tier II equivalent) was performed on the equipment. The two basic requirements are that, at the location where the railroad first finds the defect, specified information (such as the nature of the defect and the destination where the defect will be repaired) must be placed on tags attached to the equipment or in a computer tracking system and that the railroad must observe the applicable operating restrictions in paragraph (d). A third requirement, found in paragraph (c)(4), is a special conditional requirement, applying only if the defect causes any brakes to be cut out or renders the brakes inoperative. This provision was slightly modified from what was proposed in order to prevent a railroad from avoiding the requirements contained in this subsection by simply not cutting-out an inoperative brake. Consequently, the language was modified so that the

provision includes situations where a defect renders the brakes inoperative, not just situations where brakes are cut-out.

Paragraph (c)(2) requires that equipment being hauled for repairs be adequately identified. Currently, there is no requirement that equipment with defective power brakes be tagged or otherwise identified, although most railroads voluntarily engage in such activity. Furthermore, the current regulations regarding freight cars and locomotives contain tagging requirements for the movement of equipment not in compliance with those parts. See 49 CFR 215.9 and 229.9. Consequently, FRA is requiring the identification of equipment with defective power brakes through either the traditional tags which are placed in established locations on the equipment or by an automated tracking system developed by the railroad. Certain information must be contained whichever method is used by a railroad. FRA believes that the tagging or automated tracking requirements add reliability, accountability, and enforceability for the timely and proper repair of equipment with defective power brakes.

FRA is retaining the requirement that equipment found with conditions not in compliance with this part must be appropriately tagged or recorded in an automated tracking system. Although FRA is sensitive to the concerns raised by labor representatives regarding the use of automated tracking systems, FRA believes that provisions must be provided to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. Although railroad and FRA inspectors may require additional training on the use of electronic records, FRA believes that the use of such a medium to track defective equipment can expedite the identification and repair of defective equipment and, thus, reduce the time that defective equipment is operated in passenger service. In response to labor's concerns, a new paragraph (c)(3) has been added which contains a provision giving FRA the ability to monitor and review a railroad's automated tracking system and provides FRA the ability to prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of directly tagging defective equipment if FRA finds that the automated tracking system is not properly secure, is inaccessible to FRA or a railroad's employees, or fails to adequately track and monitor the movement of defective equipment. Furthermore, if the automated tracking

system developed and implemented by a railroad does not accurately and adequately record the information required by this part, the railroad will be in violation of the movement for repair provisions and subject to civil penalty liability.

In addition, under paragraph (c)(4), if the defect causes the brakes on the equipment to be cut out, then the railroad must first find out what percentage of the power brakes in the train are cut out or inoperative in some other way, using the formula in paragraph (d)(1). Next, the railroad must notify the person responsible for the movement of trains of the percentage of operative brakes and the movement restrictions imposed by paragraph (d), inform the railroad's mechanical department about the brake defect, and walk the train to confirm the percentage of operative brakes at the next point where it is safe to do so. Slight modification was made to paragraph (c)(4)(ii) and (iii) replacing the term "dispatcher" with the phrase "person responsible for the movement of trains" as some railroads do not use the term dispatcher and the term mechanical "desk" was removed as it is unnecessary and covered by the term "mechanical department."

Paragraph (d)(1). This paragraph explains the term "inoperative power brakes" and contains a new method for calculating the percentage of operative power brakes (operative primary brakes) in a train. Regarding the term itself, a cut-out power brake is an inoperative power brake, but the failure or cutting out of a secondary brake system (as defined in § 238.5) does not result in inoperative power brakes. For example, failure of dynamic brakes does not render a power brake inoperative unless the dynamic brakes are in fact primary brakes. Although the statute discusses the percentage of operative brakes in terms of a percentage of vehicles, the statute was written nearly a century ago and at that time the only way to cut out the brakes on a car or locomotive was to cut out the entire unit. See 49 U.S.C. 20302(a)(5)(B). Today, virtually every piece of equipment used in passenger service can have the brakes cut out on a per-truck or per-axle basis. Consequently, FRA is merely providing a method of calculating the percentage of operative brakes based on the design of passenger equipment used today, and, thus, a means to more accurately reflect the true braking ability of the train as a whole. FRA believes that the method of calculation contained in this final rule is consistent with the intent of Congress when it drafted the statutory requirement and simply recognizes the

technological advancements made in braking systems over the last century. Consequently, FRA intends to require the percentage of operative brakes to be determined by dividing the number of axles in the train with operative brakes by the total number of axles in the train. Furthermore, for equipment utilizing tread brake units (TBU), FRA requires that the percentage of operative brakes be determined by dividing the number of operative TBUs by the total number of TBUs.

Paragraphs (d)(2)–(d)(4), generally. These paragraphs contain various speed and other operating restrictions based on the percentage of operative brakes in order to permit passenger railroads the flexibility to efficiently move passengers without compromising safety. FRA believes that the movement restrictions contained in these paragraphs actually enhance the safety of the riding public. The requirements retain the basic principle that a train carrying passengers shall not depart a location where major brake inspections or tests are performed on a train unless the train has 100 percent operational brakes.

As previously noted in the general discussion, FRA has determined that some minor changes need to be made to the requirements proposed in the 1997 NPRM regarding the movement of equipment with defective power brakes. In order to avoid the legal implications involved with employing the statutory authority contained at 49 U.S.C. 20306 for exempting equipment from the statutory requirements related to safety appliances and power brakes, and because railroad representatives acknowledged that the flexibility provided through reliance on the exemption is minimal, FRA will not rely on the statutory exemption provision contained at 49 U.S.C. 20306 in this final rule and has modified the movement for repair provisions accordingly.

FRA will retain the exemption proposed in the 1997 NPRM for passenger train operations from a long-standing agency interpretation that prohibits the movement of a train for repairs under 49 U.S.C. 20303 if less than 85 percent of the train's brakes are operative. This interpretation is based on a 1910 ICC order codified at 49 CFR 232.1. FRA believes that this requirement is overly restrictive when applied to passenger train operations as many passenger operations utilize a small number of cars in their trains and the necessity to cut out the brakes on just one car can easily result in noncompliance. FRA believes that the retention in this final rule of the proposed speed restrictions will fully

compensate for the loss of brakes on a minority of cars. FRA rejects the BRC's recommendation that passenger trains with defective brakes be permitted to move no further than the next passenger station because such a stringent requirement is unnecessary, more restrictive than the current statutory mandate regarding the movement of defective brake equipment, and is radically counter to the way passenger trains currently handle defective equipment.

FRA is retaining those portions of the proposed movement for repair requirements that it believes are fully consistent with the existing statutory provisions regarding the movement of equipment with power brake defects and has revised those that are contrary to the statutory provisions. Therefore, passenger trains operating with 75–99 percent operative brakes will not be permitted to travel to the next forward terminal as proposed, but will be permitted to travel only to the next forward location where the necessary repairs to the brake equipment can be effectuated as mandated in the existing statute. In FRA's view, all of the other proposed methods for moving defective power brake equipment are consistent with and are in accordance with the current statutory requirements and will be retained. For example, FRA is retaining the provision which permits a passenger train with 50–75 percent operative brakes to be moved at reduced speeds to the next forward passenger station. Although the percentage of operative brakes is lower than currently permitted by FRA's longstanding agency interpretation (which FRA believes is fully compensated for by the proposed speed restrictions), FRA believes that the movement of the defective equipment to the next passenger station is in accordance with the statutory requirement as the safety of the passengers must be considered in determining the nearest location where necessary repairs can be made. In addition, permitting passenger trains to continue to the next forward location where the necessary repairs can be performed is also consistent with the statutory requirement as such movement is necessary to ensure the safety of the traveling public by protecting them from the hazards incident to performing movements against the current of traffic and recognizes the hazards incident to overcrowding platforms and trailing trains. Furthermore, retention of the movement provisions related to long-distance intercity passenger trains and long-distance Tier II equipment is

consistent with the current statutory requirements as these provisions permit the movement of defective brake equipment on these trains only to the next passenger station or the next repair location, with various speed restrictions depending on the percentage of operative brakes.

FRA recognizes that there are major differences in the operations of commuter or short-distance intercity passenger trains, and long-distance intercity passenger trains. Commuter and short-distance intercity passenger trains tend to operate for fairly short distances between passenger stations and generally operate in relatively short turn-around service between two terminals several times in any given day. On the other hand, long-distance intercity passenger trains tend to operate for long distances, with trips between the beginning terminal and ending terminal taking a day or more and traversing multiple States with relatively long distances between passenger stations. Consequently, the final rule contains slightly different requirements with regard to the movement of defective brake equipment in long-distance intercity passenger trains.

FRA believes that passenger railroads can safely and efficiently operate trains with en route brake failures under the strict set of conditions in this final rule. FRA has long held that the industry can safely operate trains at normal track speeds with as low as 85 percent effective brakes as long as the inoperative brakes were due to failures which occurred en route or due to defective cars being picked up en route and being moved for repairs. The only change in this final rule to current practice is the additional flexibility for certain passenger operations to move their equipment with a lower percentage of operative brakes, under strict speed restrictions, and recognition of the safety need to allow passenger trains to move to the nearest forward location capable of performing the repairs.

Paragraph (d)(2). This paragraph contains operating requirements for the movement of any passenger train that develops en route brake failures resulting in 74 to 50 percent operative brakes. In these circumstances, FRA will allow the train to proceed only to the next passenger station at a reduced speed, not to exceed 20 mph, to discharge passengers before proceeding without passengers to the nearest location where the necessary repairs can be made. This provision recognizes the dangers of unloading passenger at locations other than passenger stations by allowing railroads to move the

equipment to a location with the facilities to handle the discharge of passengers. Furthermore, engineering evidence and test data demonstrate that the reduced speed more than compensates for the reduced braking force. At the reduced speed, even with only 50 percent effective brakes, a train is able to stop in a much shorter distance than the same train traveling at the maximum operating speed with 100 percent operative brakes.

Paragraphs (d)(3)(i) and (ii). FRA will also permit commuter, short-distance intercity, and short-distance Tier II passenger trains experiencing en route brake failures resulting in 99 to 75 percent operative brakes to continue in service only to the next forward location where the necessary repairs can be effectuated. FRA will permit these passenger trains to continue in service past a repair location to the next forward passenger station only if the repair location does not have the facilities to safely unload passengers. However, FRA will require the speed of the train with 84 to 75 percent operative brakes to be reduced to 50 percent of the train's maximum operating speed or 40 mph, whichever is less. Engineering evidence and test data demonstrate that the reduced speed more than compensates for the reduced braking force. At the reduced speed, even with only 75 percent effective brakes, a train is able to stop in a much shorter distance than the same train traveling at the maximum operating speed with 100 percent operative brakes. APTA also presented engineering evidence and test data that demonstrated that stopping distances remained well within signal spacing distances with a large margin of safety even for trains with as low as 85 percent effective brakes. Consequently, FRA will not impose speed restrictions on trains operating with 85 to 99 percent operative brakes.

Paragraph (d)(4). This paragraph contains the operating restrictions on moving equipment with defective brakes in long-distance intercity passenger trains. This paragraph permits the movement of defective brake equipment in these trains only to the nearest forward location designated as a repair location for this equipment by the operating railroad in the list required by § 238.19(d). FRA will also permit long-distance intercity passenger trains to continue in service past a designated repair location to the next forward passenger station only if the designated repair location does not have the facilities to safely unload passengers. Although FRA is permitting the continued operation of long-distance intercity passenger trains that develop

en route brake failures resulting in 99 to 85 percent operative brakes at normal speeds, the final rule contains a speed restriction of no greater than 40 mph when the en route brake failures result in 84 to 75 percent operative brakes. Therefore, these trains gain flexibility in being permitted to move a greater percentage of defective equipment than currently allowed and are able to move that equipment to the next forward repair location rather than the "nearest" repair location as currently required. See 49 U.S.C. 20303(a). As noted previously, FRA believes that the safety of the traveling public mandates the flexibility of permitting passenger trains to continue to the next forward repair location or passenger station because requiring trains to reverse directions and perform back hauls to the nearest repair location increases the risk of collision on the railroad.

In this final rule, FRA is retaining the proposed requirement that operators of long-distance passenger trains designate the locations where repairs can be conducted on the equipment. Although FRA agrees that this provision puts the control of what locations constitute repair locations in the hands of the railroad, FRA believes that the operators of these long-distance intercity trains are in the best position to determine which locations have the necessary expertise to handle the repairs of the somewhat advanced braking systems utilized in passenger trains. Due to the unique technologies used on the brake systems of these operations and the unique operating environments, the facilities and personnel necessary to conduct proper repairs on this equipment are somewhat specialized and limited. Moreover, FRA is retaining the broad performance-based requirement that railroads operating this equipment designate a sufficient number of repair locations to ensure the safe and timely repair of the equipment. Contrary to the beliefs of some labor commenters, FRA believes that this performance standard provides FRA sufficient grounds to institute civil penalty enforcement actions or take other enforcement actions if, based on its expertise and experience, FRA believes the railroad is failing to designate an adequate number of repair locations.

Furthermore, rather than attempt to develop a standard applicable to all situations in the context of short-distance intercity and commuter trains, which FRA does not believe can be accomplished, FRA will approach the issue of what constitutes the next forward location where repairs can be effectuated based on a case-by-case

analysis of each situation. FRA believes that its field inspectors are in the best position to determine whether a railroad exercised good faith in determining when and where to move a piece of defective brake equipment. In making these determinations both the railroad as well as FRA's inspectors must conduct a multi-factor analysis based on the facts of each case. In determining whether a particular location is a location where necessary repairs can be made or whether a location is the next forward repair location in a passenger train context, the accessibility of the location, the ability to safely make the repairs at that location, and the safety of the passengers are the overriding factors that must be considered in any analysis. These factors have a multitude of sub-factors which must be considered, such as: the type of repair required; the safety of employees responsible for conducting the repairs; the safety of employees responsible for getting the equipment to or from a particular location; the switching operations necessary to effectuate the move; the railroad's recent history and current practice of making repairs (brake and non-brake) at a particular location; relevant weather conditions; potential overcrowding of passenger platforms; and the overcrowding of trailing trains.

Paragraph (e). This paragraph contains the operating restrictions on passenger trains with inoperative power brakes on the front or rear unit of the train. Similar provisions were contained in the 1997 NPRM and included in each of the various operating restriction contained in paragraph (d). In order to make the rule easier to understand, FRA has added this paragraph to the final rule and removed the repetitious language from each of the provisions contained in paragraph (d). As noted in the general preamble discussion above, FRA is slightly modifying the provisions related to the operation of trains with defective brakes on the front or rear car. In the 1997 NPRM, FRA proposed that if the power brakes on the front or rear unit become inoperative then a qualified person must be stationed at the handbrake on the unit. See 62 FR 49797. FRA recognizes that in some instances the handbrake on a car located at the front or rear of a train may not be accessible to a member of the train crew or may be located outside the interior of the car and, thus, unsafe for a crew member to operate while the train is in motion. FRA also recognizes that in many circumstances when a car at the front or rear of a train has inoperative brakes certain speed restrictions should be placed on the train; however, FRA

believes that railroads are in the best position to determine what the appropriate speed restriction should be given the circumstances involved. Therefore, FRA is modifying the requirements for the use of such cars and paragraph (e) requires that appropriate speed restrictions be imposed with inoperative brakes on the front or rear unit and that trains containing equipment with inaccessible handbrakes or with handbrakes located outside the interior of a car be operated at restricted speed (i.e. 20 mph) and that the defective equipment be removed or repositioned in the train at the first possible location. The operating restrictions contained in this paragraph are consistent with current industry practice and should not impose any additional burden to the industry.

It should be noted that the provisions contained in 49 U.S.C. 20303(c) continue to remain applicable to a railroad when hauling equipment with defective or insecure power brakes or other safety appliances pursuant to the requirements contained in this final rule. This section of the statute contains the liability provisions attendant with the movement of equipment with defective or insecure safety appliances, including power brakes.

Section 238.17 Movement of Passenger Equipment With Other Than Power Brake Defects

This section contains the requirements for the movement of passenger equipment with a condition not in compliance with part 238, excluding a power brake defect and including a safety appliance defect, without civil penalty liability under this part. (Railroads remain liable, however, under 49 U.S.C. 20303(c), as described in the discussion of the previous section.)

As previously noted, there are currently no statutory or regulatory restrictions on the movement of passenger cars with defective conditions that are not power brake or safety appliance defects. The provisions contained in this section are similar to the provisions for moving defective locomotives and freight cars currently contained in 49 CFR 229.9 and 215.9, respectively. As these provisions have generally worked well with regard to the movement of defective locomotives and freight cars and in order to maintain consistency, FRA has modeled these movement requirements on those existing requirements. FRA is allowing passenger railroads the flexibility to continue to use equipment with non-safety-critical defects until the next scheduled calendar day exterior

mechanical inspection. However, FRA intends the calendar day mechanical inspection to be the tool used by railroads to repair all reported defects and to prevent continued use of defective equipment to carry passengers. (Compare § 238.17(b) with § 238.17(c).) FRA intends for 49 CFR 229.9 to continue to govern the movement of locomotives used in passenger service which develop defective conditions, not covered by part 238, that are not in compliance with part 229. Part 229 will continue to cover (non-steam) locomotives that are used by the tourist railroads until such railroads are covered by part 238.

After review of the comments submitted and provided orally at the Working Group meetings, FRA is making some modest changes in this final rule regarding the movement of equipment with non-power brake defects. FRA agrees with the comments of railroad representatives that the 1997 NPRM may have been over-reaching in requiring a QMP to make a determination regarding the safety of moving a piece of defective equipment for any of the mechanical components addressed in this regulation. However, FRA also agrees with the comments submitted by labor representatives that railroads should not determine what components are considered safety-critical. Therefore, FRA will require a determination regarding the safety of moving a piece of equipment by a QMP (as discussed above) whenever a potential running gear defect is involved. FRA rejects the language proposed by APTA that the defect be a potentially "safety-critical" running gear defect as FRA believes that any defect to a running gear component is potentially safety-critical. In order to avoid confusion, FRA is providing an explicit definition of "running gear defect." FRA is defining the term to mean any condition not in compliance with this part which involves a truck component, a propulsion system component, a draft system component, a wheel or a wheel component. In this final rule, FRA will permit the use of a qualified person to determine the safety and establish appropriate movement restrictions on continued use of equipment which involves non-running gear defects.

In paragraph (b), FRA is providing very limited flexibility to railroads to operate defective equipment from a location where a calendar day mechanical inspection was performed in order to effectuate repairs. FRA intends for the calendar day mechanical inspection to be as comprehensive as possible and to be the time when all

defective components are identified and repaired. In order to ensure that these daily inspections are performed by highly qualified inspectors, FRA has provided the railroads with considerable flexibility to perform these inspections at locations that are best suited to a quality and comprehensive inspection. Therefore, FRA will permit the movement of defective equipment from these inspection locations only with very stringent restrictions. Equipment containing running gear defects may only be moved from such locations if it is not in passenger service and is in a non-revenue train. Equipment containing non-running gear defects may be moved in a revenue train provided the equipment is locked-out and empty, except that the equipment may be used and occupied by a member of the train crew to the extent necessary to safely operate the train. Any defective equipment moved from such locations must also be properly identified as required in paragraph (c)(4) and moved in accordance with any movement restriction imposed. FRA believes these stringent movement restrictions will provide railroads limited flexibility to move defective equipment to a location where it can best be repaired but will limit a railroad's desire or ability to move defective equipment from these inspection locations and will encourage the performance of the calendar day mechanical inspections at locations where repairs to equipment can be conducted.

Paragraph (c) contains the requirements regarding the movement of passenger equipment that develops a condition not in compliance with this part, other than a safety appliance defect, while en route to its destination after its calendar day mechanical inspection was performed. This paragraph has been slightly modified from that proposed in the 1997 NPRM in order to recognize the differing requirements for running gear defects and non-running gear defects as noted in the discussion above. Paragraph (c)(1) retains the requirement that the QMP may make the determination regarding the continued use of equipment containing a potential running gear defect based on the description provided by on-site personnel. Although FRA recognizes the concerns raised by labor representatives, FRA believes that the rule must recognize the reality of current operations and acknowledge the fact that mechanical-type personnel are not readily available at every location on a railroad's line of road. Furthermore, when such off-site determinations are made the rule

requires that the equipment only be moved to the next forward location where the equipment can be inspected by a QMP to verify the description of the defect provided by the on-site personnel. Paragraph (c)(2) also permits determinations regarding the continued use of equipment containing non-running gear defects to be made by a qualified person based on a description provided by on-site personnel. In cases where non-running gear defects are involved, FRA will not require that the equipment be inspected at the next forward location by a qualified person as the safety impact of such defects should be readily identifiable based upon a description by on-site personnel and can be adequately addressed via radio communication.

Paragraph (c)(4) contains the requirements for identifying defective equipment. This paragraph permits the identification and tracking of defective equipment in either of two ways. One option is to tag the equipment in a manner similar to what is currently required under § 215.9 for freight cars. The second option is to record the specified information in an automated tracking system. Although FRA is sensitive to the concerns raised by labor representatives regarding the use of automated tracking systems, FRA believes that provision must be made to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. Although railroad and FRA inspectors may require additional training on the use of electronic records, FRA believes that the use of such a medium to track defective equipment can expedite the identification and repair of defective equipment and, thus, reduce the time that defective equipment is operated in passenger service. In response to labor's concerns, paragraph (c)(5) has been added to this final rule and contains a provision which gives FRA the ability to monitor and review a railroad's automated tracking system and provides FRA the ability to prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of directly tagging defective equipment if FRA finds that the automated tracking system is not properly secure, is inaccessible to FRA or a railroad's employees, or fails to adequately track and monitor the movement of defective equipment. Furthermore, if the automated tracking system developed and implemented by a railroad does not accurately and adequately record the information required by this part, the railroad will be in violation of the movement for

repair provisions contained in this section and subject to civil penalty liability.

Paragraph (d) contains a requirement that was inadvertently omitted from the 1997 NPRM but which is integral to the movement of equipment which has been involved in a derailment. This paragraph addresses the inspection of roller bearings on a car whose truck is involved in a derailment. As the proper operation and condition of a vehicle's roller bearing is a key element in ensuring the safe movement of the vehicle, FRA believes it is vital that this provision be included in these final regulations. The added requirement prohibits a railroad from continuing in service a piece of passenger equipment that has a roller bearing whose truck was involved in a derailment unless the bearing is inspected and tested in accordance with the provisions stated. The added provision is identical to the requirement currently contained in 49 CFR § 215.115(b). Although the existing provision is applicable to freight cars, virtually every passenger train operation follows the provisions contained in that section prior to returning a piece of equipment to service after it was involved in a derailment and, thus, should not result in any added burden to the industry. FRA believes that the practice is critical to ensuring the proper operation of the roller bearing after a derailment occurs and should be incorporated into this final rule.

Paragraph (e) contains the special statutory restrictions on the movement of passenger equipment with a safety appliance defect, other than a power brake defect. FRA does not intend to alter the current statutory requirements contained in 49 U.S.C. 20303 regarding the movement of passenger equipment with defective or insecure safety appliances. See §§ 238.229, 238.429, 238.431. Consequently, in paragraph (e), FRA is requiring that passenger equipment that develops a defective or insecure safety appliance continue to be subject to all the statutory restrictions on its movement. Under the current statutory language—

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 * * * 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 farther than the place of repair described in clause (1) of this subsection.

49 U.S.C. 20303(a). It should be noted that the safety appliance requirements applicable to Tier I equipment merely references the Railroad Safety Appliance Standards (49 CFR part 231); however, FRA has mandated separate safety appliance requirements for Tier II passenger equipment. See §§ 238.429 and 238.431.

As noted previously, the statutory provisions related to the movement of equipment with defective or insecure safety appliances permit the movement of such equipment to the nearest location where the necessary repairs can be made. The determination of what constitutes the nearest location where the necessary repairs can be effectuated in a safety appliance context is identical to the analysis required when dealing with a power brake defect. In making these determinations both the railroad as well as FRA's inspectors must conduct a multi-factor analysis based on the facts of each case. In determining whether a particular location is a location where necessary repairs can be made or whether a location is the nearest repair location in a passenger train context, the accessibility of the location, the ability to safely make the repairs at that location, and the safety of the passengers are the overriding factors that must be considered in any analysis. These factors have a multitude of sub-factors which must be considered, such as: the type of repair required; the safety of the passengers if a move against the current of traffic is conducted; the safety of employees responsible for conducting the repairs; the safety of employees responsible for getting the equipment to or from a particular location; the switching operations necessary to effectuate the move; the railroad's recent history and current practice of making repairs (brake and non-brake) at a particular location; relevant weather conditions; potential overcrowding of passenger platforms; and the overcrowding of trailing trains. Therefore, in many circumstances trains will be permitted to continue to the next forward location where the necessary repairs can be performed as such movement is necessary to ensure the safety of the traveling public by protecting them from the hazards incident to performing movements against the current of traffic.

Section 238.19 Reporting and Tracking Defective Equipment

This section contains the reporting and tracking requirements that passenger railroads must maintain regarding defective passenger equipment. FRA is requiring that each railroad develop and maintain a system

for reporting and tracking equipment defects. Paragraph (a) of this section requires that, for each equipment defect discovered by the railroad on equipment used by the railroad, the system record the following information: the number by which the equipment is identified, type of defect, when the defect occurred, the determination made by a qualified person or a qualified maintenance person on handling the equipment, the name of such person, any operating restrictions placed on the equipment, and finally how and when the defect was corrected. FRA has not identified any specific method or means by which a railroad should gather and maintain the required information. FRA believes that each railroad is in the best position to determine the method of obtaining the required information which is most efficient and effective based on its specific operation. Thus, railroads could maintain this information either in some type of written medium or electronically in conjunction with some type of automated tracking system.

FRA believes that the reporting and tracking of defective equipment is an essential feature of any effective system safety program. Railroad managers are able to utilize such systems to ensure that the railroad complies with safety regulations, does not use unsafe equipment, makes needed repairs, and has failure data to make reliability-based decisions on maintenance intervals. Furthermore, most passenger railroads currently have some sort of reporting and tracking system in place. FRA recognizes that some railroads may have to incur additional initial costs to develop or improve defect reporting and tracking systems; however, FRA believes these costs can be recouped through the increased operating efficiency that an effective recording and tracking system provides.

Paragraph (a) makes clear that railroads have this tracking system in place within 26 months after publication of the final rule in the **Federal Register**. APTA recommended that railroads be provided a two-year phase-in period for this requirement to become effective. As the requirements for tracking defective equipment are contingent on completion of a railroad's training of its employees, FRA will provide the same time period for implementation of the reporting and tracking system. However, FRA believes that APTA's recommendation was based on a misunderstanding that the defect tracking system had to be an automated electronic system. As the previous discussion makes clear, the defect tracking system need not be an

electronic automated system but could consist of a written records retention system. Thus, even if a railroad needs two or more years to develop an automated tracking system, the railroad could utilize a written tracking system while the automated system is being developed. Virtually all railroads currently track their defective equipment by some means; FRA believes that these current methods of compiling data could be slightly modified to include—or already include—all of the information required by this section.

Paragraph (b) requires that railroads maintain the required information for a period equal to one periodic maintenance interval for each specific type of equipment. FRA believes that this minimum retention period will ensure that the records remain available when they are most needed, but will not place a burdensome record storage requirement on railroads. However, FRA strongly encourages railroads to keep these records for longer periods of time because they form the basis for future reliability-driven decisions concerning test and maintenance intervals.

In paragraph (d), FRA retains the previously proposed requirement that railroads operating long-distance passenger trains and Tier II passenger equipment maintain a list of the locations where repairs can be made to the equipment's power brake components. Although FRA agrees that this provision puts the control of what locations constitute repair locations in the hands of the railroad, FRA believes that the operators of these long-distance intercity trains and Tier II passenger equipment are in the best position to determine which locations have the necessary expertise to handle the repairs of the somewhat advanced braking systems utilized in these passenger trains. Due to the unique technologies used in the brake systems of these operations and the unique operating environments, the facilities and personnel necessary to conduct proper repairs on this equipment are somewhat specialized and limited. Moreover, this final rule retains the broad performance-based requirement that railroads operating this equipment designate a sufficient number of repair locations to ensure the safe and timely repair of the equipment. Contrary to the beliefs of some labor commenters, FRA believes that this performance standard provides FRA sufficient grounds to institute civil penalty enforcement actions or take other enforcement actions if, based on its expertise and experience, FRA believes the railroad is failing to

designate an adequate number of repair locations.

Section 238.21 Special Approval Procedure

This section contains the procedures to be followed when seeking to obtain FRA approval of an alternative standard under §§ 238.103 (fire safety), 238.223 (fuel tanks), 238.309 (periodic brake equipment maintenance), 238.311 (single car test), 238.405 (longitudinal static compressive strength), or 238.427 (suspension system); for approval of alternative compliance under § 238.201 (covers structural standards other than the static end strength requirement); and for special approval of pre-revenue service acceptance testing plans as required by § 238.111. Procedures for obtaining FRA approval of inspection, testing, and maintenance programs for Tier II equipment under § 238.503 are found at § 238.505. FRA has revised this section in the final rule from that which was proposed in the NPRM, consistent with other changes made in the final rule.

FRA intends to entertain petitions for alternative compliance under § 238.201 to allow operation of equipment that complies with the static end strength requirement (§ 238.203) but does not fully comply with the other final standards in subpart C of part 238, provided the petitioner can demonstrate "equivalent safety" in that the equipment will operate at a level of safety that is at least equivalent to that afforded by the provision(s) of subpart C for which alternate compliance is sought. Equivalent safety may be afforded by features or measures that compensate for equipment that does not meet such standard(s) on its own. Equivalent safety is met when railroad employees, passengers, and the general public are no more at risk from passenger equipment that does not specifically meet the requirement(s) for which alternative compliance is sought, but is protected by compensating features or measures, than when the equipment specifically complies with the requirement(s) itself.

FRA recommends that the risk assessment portion of a railroad's system safety program be used to demonstrate equivalent safety. The burden would be on the petitioning railroad to perform a comparative risk assessment and to prove equivalent safety. FRA has experience with two instances involving different passenger equipment operations where a comparative risk assessment has been used successfully. Amtrak commissioned a comparative risk assessment between current Northeast

Corridor operations and proposed operations involving the HST at speeds up to 150 mph. The risk assessment demonstrated that proposed countermeasures such as enhancements to the train control system and the increased structural strength and the crash energy management design of the HST should compensate for the increased operating speed. The comparative risk assessment quantitatively showed that, with the safety improvements included in the Amtrak plan, passengers were no more at risk travelling on the HST at 150 mph on the Northeast Corridor than if they were travelling on an existing Amtrak passenger train at a lesser speed on the same corridor.

The second instance is the proposed Florida Overland Express (FOX) operation of a French TGV high speed rail system in Florida that was being considered until January 1999. The State of Florida has withdrawn its support for the project, and work on the project has ceased. Nonetheless, FOX had performed a comparative risk assessment of three operations: the HST on the Northeast Corridor, the TGV on high speed lines in France, and the proposed FOX operation in Florida. See FRA Docket: RM Pet. 97-1. The analysis showed the TGV operation in France to pose less risk to passengers than the HST on the Northeast Corridor, and the proposed FOX operation to be even safer than the TGV in France. The FOX risk assessment suggested that collision avoidance provided by a dedicated right-of-way with no grade crossings more than compensated for the increased speed and decreased structural strength of the proposed equipment.

FRA cites these two instances as examples of what is expected to demonstrate equivalent safety for proposed operations when a petition for alternative compliance is submitted in accordance with § 238.201. Any such analysis would need to be predicated on a detailed engineering analysis of the crashworthiness of the vehicles proposed to be employed, permitting FRA to assess the gap in safety between those vehicles and equipment built to the specific requirements of subpart C. FRA would also expect an analysis showing the effectiveness of clearly compensating features or measures, such as closing grade crossings, providing absolute separation of lighter rail equipment from heavy rail equipment, or using highly capable signal and train control systems that significantly reduce the probability of accidents caused by human error. FRA would provide advice and guidance to

organizations wishing to demonstrate equivalent safety, but the burden of performing a comparative risk assessment and establishing that the operation provides equivalent safety is on the entity proposing to operate equipment that does not fully comply with the standards in subpart C.

Section 238.23 Information Collection

This provision shows which sections of this part have been approved by the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* A more detailed discussion of the information collection requirements in this part is provided below.

Subpart B—Safety Planning and General Requirements

Section 238.101 Scope

This subpart contains safety planning requirements and other generally applicable requirements for all passenger equipment subject to this part.

Section 238.103 Fire Safety.

This section contains the fire safety planning and analysis requirements for passenger equipment, as well as the requirements for the materials used in passenger equipment. This section is comprised of parts of proposed sections 238.105 and 238.115 in the NPRM, which FRA has combined together in this final rule as APTA had suggested in its comments.

Paragraph (a)(1) contains the fire safety requirements for materials used in constructing passenger cars and cabs of locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. Such materials shall comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part, or alternative standards issued or recognized by an expert consensus organization after special approval of FRA's Associate Administrator for Safety under the procedures specified in section 238.21. Paragraph (a)(1) is based on proposed § 238.115(a)(1) in the NPRM. See 62 FR 49803.

In the final rule, paragraph (a)(1) expressly applies to materials used in constructing a passenger car or a locomotive cab, unlike the wording of proposed § 238.115(a)(1) in the NPRM, see 62 FR 49803, which expressly applied to all materials used in constructing the *interior* of a passenger

car or a locomotive cab. As proposed in the NPRM, of course, such materials were required to meet the test performance criteria for flammability and smoke emission characteristics contained in Appendix B to part 238, see 62 FR 49823-4, or alternative standards after FRA approval. FRA has removed the word "interior" from this paragraph in the final rule because its use is inconsistent with the requirements of part 238 as a whole. In the NPRM, proposed Appendix B itself provided test performance criteria for a category of materials entitled, "Exterior Plastic Components"; specifically, "End Cap" and "Roof Housings" under the function of material column in the table. Further, proposed Appendix B separately provided test methods and performance criteria for a function of material termed "Exterior Boxes" under the category entitled, "Component Box Covers." As expressed in the NPRM, FRA intended that "exterior" materials used in constructing passenger cars and locomotive cabs comply with test performance criteria for flammability and smoke emission characteristics.

In the final rule, materials used in constructing passenger cars and locomotive cabs are required to meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B, or alternative standards after FRA approval. As a result, with the exception of any alternative standards approved by FRA, the terms of Appendix B govern which testing of materials is, or is not, required as a threshold inquiry. Whether materials are physically located on the exterior or in the interior of a passenger car, for example, such materials are subject to testing for flammability and smoke emission characteristics if so required by the terms of Appendix B. Overall, FRA believes that the final rule more appropriately specifies the flammability and smoke emission testing requirements for materials used in constructing passenger cars and locomotive cabs, without unnecessarily burdening railroads. In particular FRA notes that, unlike the NPRM, Appendix B in the final rule provides express exceptions from the need to test materials used in constructing passenger cars and locomotive cabs under certain conditions. (See the section-by-section analysis discussion of Appendix B to part 238, explaining the changes to Appendix B.)

In its comments on the NPRM, APTA recommended that the requirements of paragraph (a)(1) apply to passenger cars and cabs of locomotives ordered on or after one year following the effective

date of the final rule. APTA's suggested rule text did not contain an outside limit on the placement in service of new passenger equipment not meeting the requirements of paragraph (a)(1), although ordered within the permitted time. However, FRA believes that an outside limit on the placement in service of new passenger equipment not meeting the requirements of this section needs to be retained so as not to delay unnecessarily the implementation of the rule.

Under paragraph (a)(2), on or after November 8, 1999 materials introduced into a passenger car or a locomotive cab, during any kind of rebuild, refurbishment, or overhaul of such passenger equipment, shall meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B, or alternative standards after FRA approval as specified in this rule. Originally, FRA proposed that the test performance criteria for flammability and smoke emission characteristics apply as of the effective date of the final rule to materials used in refurbishing passenger car and locomotive cab interiors. FRA has removed the express reference to passenger car and locomotive cab interiors for the reasons stated in the above discussion of paragraph (a)(1).

In response to the NPRM, APTA commented that it may support a rule requiring the materials selection criteria to be used when the interiors of existing passenger equipment are refurbished, if the term refurbish were carefully defined in the Working Group meetings. In either case, APTA recommended that this provision should apply as of one year following the effective date of the final rule. FRA has refined paragraph (a)(2) to address APTA's concern: Simply put, if material is introduced into passenger cars and locomotive cabs during any kind of rebuild, refurbishment, or overhaul of the equipment, the material must comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B, or alternative standards after FRA approval. For example, if a seat or a section of a wall is replaced, then the materials used to replace those components (including an individual seat cushion) must comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B, or alternative standards after FRA approval. However, paragraph (a)(2) does not in itself require a railroad to remove existing materials from a vehicle that do not comply with test performance criteria for flammability and smoke emission

characteristics, when such materials are found but not intended to be replaced during the railroad's rebuilding, refurbishment, or overhaul of that vehicle. Of course, such non-compliant materials may be required to be removed from the vehicle pursuant to the fire safety analyses required under paragraph (d) of this section; yet, again, the requirements of paragraph (a)(2) do not specifically require such removal. FRA believes that deferring the implementation of this provision for one year, as recommended by APTA, is therefore not necessary for railroads in light of this section's clearly defined application.

As noted above in the discussions of paragraphs (a)(1) and (a)(2), railroads can request FRA approval to utilize alternative standards issued or recognized by an expert consensus organization in lieu of complying with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B. A railroad must make such a request pursuant to the procedures in § 238.21.

Paragraph (b) requires railroads to obtain certification that a representative sample of combustible materials to be used in constructing passenger cars and locomotive cabs (pursuant to paragraph (a)(1)) or introduced into such equipment as part of any kind of rebuild, refurbishment, or overhaul of the equipment (pursuant to paragraph (a)(2)) have been tested and comply with the fire safety requirements specified in this part. Paragraph (b) is based on § 238.115(b) in the NPRM. FRA has modified the certification requirement following a comment by APTA on the NPRM that the certification be based on a representative sample of the combustible materials used. In response to another APTA comment, FRA has also clarified that the certification be based on the results at the time the materials were tested.

Paragraph (c) requires each railroad to address the fire safety of new equipment during the design stage so as to reduce the risk of harm due to fire to an acceptable level using MIL-STD-882C as a guide or another such formal methodology. (A copy of MIL-STD-882C has been placed in the public docket for this rulemaking.) To this end, the rule requires that each railroad complete a written analysis of the fire safety problem and ensure that good fire protection practice is used during the design of the equipment. This paragraph is based on proposed § 238.105(a) and (b) in the NPRM. See 62 FR 49800.

Booz-Allen & Hamilton, Inc. (Booz-Allen) commented that the risk

acceptance level be clarified. It stated that MIL-STD-882C does not define a risk acceptance level itself, and it believed each individual railroad should determine that level based on its own operating experience, fleet life, operating conditions, and other factors. FRA recognizes that MIL-STD-882C does not define a specific acceptance level itself. Yet, the Standard leads a railroad through the steps necessary to determine an acceptance level, and the railroad is in the best position to make that determination. FRA notes that Booz-Allen also submitted a number of other comments on the elements on the fire safety analyses required by the rule, and FRA has incorporated several of these comments in whole and in part.

Paragraph (d) requires that existing passenger equipment and operations be subjected to a fire safety analysis similar to that proposed for new equipment in paragraph (c). This paragraph is based on proposed § 238.105(d) in the NPRM. See 62 FR 49801. A preliminary fire safety analysis would be required within the first year. This effort would constitute an overview of the fleet and service environments, together with known elements of risk (e.g., tunnels). For any category of equipment and service identified as possibly presenting unacceptable risk, a full analysis and any necessary remedial action would be required within the following year. A full fire safety analysis, including review of the extent to which materials in all existing cars comply with the test performance criteria for flammability and smoke emission characteristics contained in Appendix B to this part or alternative standards approved by FRA under this part, would be required within 4 years. This overall review would closely parallel and reinforce the passenger train emergency preparedness planning effort mandated under a separate docket (see 63 FR 24630; May 4, 1998).

Paragraph (d) responds to NTSB concerns following its investigation of the collision involving a MARC commuter train with Amtrak's Capitol Limited at Silver Spring, Maryland, on February 16, 1996. Among 13 recommendations addressed to FRA was the following:

Require that a comprehensive inspection of all commuter passenger cars be performed to independently verify that the interior materials in these cars meet the expected performance requirements for flammability and smoke emissions characteristics.

(R-97-20) (NTSB/RAR-97/02, "Collision and Derailment of Maryland Rail Commuter MARC Train 286 and National Railroad Passenger Corporation

AMTRAK Train 29 Near Silver Spring, Maryland on February 16, 1996.") The NTSB noted that some materials taken from a MARC car not involved in the fire that resulted from the collision "failed current flammability and smoke emissions testing criteria," and that the materials in the actual cab control car involved in the collision "also most likely would have failed" to meet the testing criteria. (NTSB/RAR 97/02 at 63.) The NTSB did note, however, that had the materials met current performance criteria, the outcome would not have been any different because of the presence of diesel fuel sprayed into the cab control car. *Id.* Overall, the NTSB found that because other commuter passenger cars may also have interior materials that may not meet specified performance criteria for flammability and smoke emission characteristics, the safety of passengers in those cars could be at risk.

FRA agrees with the NTSB that steps must be taken to minimize fire safety vulnerabilities in the existing rail passenger equipment fleet. Present fire safety guidelines are advisory and were not introduced by FRA until 1984. Even in recent years, passenger railroads have been free to utilize non-compliant materials (particularly during interior refurbishment funded locally without FTA support). It is appropriate for each commuter authority and Amtrak to evaluate the mix of materials, possible sources of ignition, and potential fire environments—including tunnels, cuts and elevated structures where evacuation to the outside of the vehicle may be difficult or ineffectual in reducing the risk of injury—relevant to the risk of injury due to fire or smoke exposure.

FRA is concerned in particular with the risk arising from the operation of cab cars forward and MU locomotives. Due to their position in the lead of a passenger train, these vehicles are more greatly exposed to the risk of fire from collisions with other rail vehicles as well as highway vehicles at grade crossings. In a collision, fire may erupt from the fuel tanks of both the rail and highway vehicles, and also from tanks used by highway vehicles that transport loads of flammable material. The level of risk on each railroad corresponds to the number of highway-rail grade crossings, density of rail traffic, and opportunities for collisions.

FRA requested comments on the costs and benefits associated with the approach contained in paragraph (d). APTA commented that there would be little safety benefit to commuter railroads, and potentially great cost, in requiring the fire safety program for new

passenger equipment to be applied to all categories of existing passenger equipment. APTA commented that the need for a program of this type has not been demonstrated, and that neither statistics nor other evidence has been presented to show that non fuel-fed equipment fires are a serious cause of injury or death in the passenger railroad industry. APTA added that, unlike a fire safety analysis of new equipment, where design flexibility exists to correct in an economical manner any deficiencies uncovered by the analysis, costs to modify existing equipment can be an order of magnitude higher. Overall, APTA believed the impact of the proposal to be great due to the expense of retrofitting equipment, although it was unable to quantify the exact impact without performing the fire safety analyses necessary to determine what modifications needed to be done to equipment. Booz-Allen also commented that the rule will not be cost-effective for existing passenger equipment that has less than 5 years of service life.

FRA recognizes the concern that retrofitting existing passenger equipment may impose considerable cost, and FRA neither proposed nor is requiring that materials not complying with the test performance criteria for flammability and smoke emission characteristics be removed in every instance from existing passenger equipment, if such materials are found during a fire safety analysis. Accordingly, each railroad is afforded the flexibility of reducing an unacceptable safety risk uncovered during an analysis of its equipment by the best means it sees fit. However, FRA is reluctant to withhold application of this provision to equipment with less than a specified service life. First, the practical question exists whether the service life of a vehicle can be specified in fact, considering the ability to extend a vehicle's life by rebuilding and the possibility of its sale to other railroads. Second, FRA believes that a preliminary fire safety analysis of all passenger equipment is necessary to determine whether any passenger equipment may present an unacceptable safety risk for passengers and crewmembers, regardless of the age of the vehicle. If an unacceptable risk is in fact found and the railroad had intended on retiring the equipment in the near future, the railroad can evaluate for itself whether it is more economical to retire the equipment or correct the safety deficiency. Further, considering the historical record of fires on passenger equipment, FRA does not expect railroads to find widespread fire safety

problems on the equipment it operates, and thus FRA would expect that most of the time a preliminary fire safety analysis would be all that is necessary.

In its comments on the NPRM, Booz-Allen questioned whether the fire safety analysis of existing equipment would include consideration of nonmetallic and noncombustible materials. FRA believes that such consideration is necessary because, for example, floor tiles or other non-metallic materials may have coatings that may emit gas in a fire. Booz-Allen also commented that the fire risk of equipment depends on the ignitability of the materials, and, accordingly, ignitability tests should be included as part of the performance criteria. FRA believes the ignitability of materials is sufficiently addressed by the test performance criteria for flammability and smoke emission characteristics found in Appendix B to this part.

In the end, FRA believes the concern of the commenters as to the expense of paragraph (d) is overestimated. A railroad is not required to replace non-compliant materials in every instance, if such materials are found, and that has been made clear in the rule text. Neither has FRA specified that the railroad perform a fire safety analysis equivalent to that required for new equipment under paragraph (c).

As a final point FRA notes that, following its investigation of the Silver Spring, Maryland, passenger train collision, the NTSB also found that Federal guidelines on the flammability and smoke emission characteristics and the testing of interior materials do not provide for the integrated use of passenger car interior materials and, as a result, are not useful in predicting the safety of the interior environment of a passenger car in a fire. (NTSB/RAR-97/02, at 74) FRA believes that existing fire safety guidelines have continuing value for their specific purpose. Those guidelines are being codified, as revised, in this final rule as the best currently available criteria for analysis of individual materials. As noted above, FRA is conducting research through NIST to address the interaction of materials and other aspects of fire safety from a broader, systems approach. This philosophy is embodied in part in paragraph (c) with respect to new equipment. Based on this ongoing research and industry fire safety efforts, FRA expects to propose new fire safety standards in the second phase of this rulemaking.

Section 238.105 Train Hardware and Software Safety

This section applies to train hardware and software used to control or monitor safety functions in passenger equipment ordered on or after September 8, 2000, and such components implemented or materially modified in new or existing passenger equipment on or after September 9, 2002. Inclusion of these requirements in passenger equipment reflects the growing role of automated systems to control or monitor passenger train safety functions.

This section represents the merger of proposed sections 238.107 ("Software safety program") and 238.121 ("Train system software and hardware") in the NPRM. Although FRA received no particular comments on these sections in response to the NPRM, FRA determined that these sections should be combined to make the requirements of the final rule more concise and clear.

Paragraph (a) requires the railroad to develop and maintain a written hardware and software safety program to guide the design, development, testing, integration, and verification of computer software and hardware that controls or monitors passenger equipment safety functions. In preparing this paragraph of the final rule, FRA essentially combined the requirements proposed in § 238.107(a), and § 238.121(a) of the NPRM. See 62 FR 49801, 49803. Paragraph (b) states that the hardware and software safety program shall be based on a formal safety methodology that includes a Failure Modes, Effects, Criticality Analysis (FMECA); full verification and validation testing for all hardware and software that controls or monitors equipment safety functions, including testing for the interfaces of such hardware and software; and comprehensive hardware and software integration testing to ensure that the software functions as intended. A formal safety analysis that includes full verification testing is standard practice for safety systems that contain software components. Hardware and software integration testing ensures that the hardware and the software installed in the hardware function together as intended. This testing is common practice for safety control systems that include both software and hardware components. The requirements found in paragraph (b) arise in particular from § 238.121(a) and (b) of the NPRM. See 62 FR 49803.

Paragraph (c) focuses on ensuring the safety and reliability of software that controls or monitors passenger equipment safety functions. Paragraph

(c) specifies that, for purposes of complying with this section, such software shall be considered safety-critical unless a completely redundant, failsafe, non-software means to provide the same function is provided. The requirements of this paragraph were principally drawn from § 238.107(a) and (b) of the NPRM. See 62 FR 49801. FRA notes that the final rule omits proposed § 238.107(c) in the NPRM as a separate provision in this rule. See *id.* However, in complying with paragraph (c) of the final rule, a railroad must necessarily ensure that software safety requirements are specified in its contracts for the purchase of the software. The railroad must further retain documentation to show that the software was manufactured to the design criteria specified pursuant to this section and that all required testing was performed. However, verification and validation of control systems by an independent entity is not required by this rule, nor is a fully quantitative proof of safety mandated by this rule, as neither was proposed.

Paragraph (d) specifies that hardware and software that controls or monitors safety functions shall include design features that result in a safe condition in the event of a computer hardware or software failure. Such design features are used in aircraft, as well as in weapon control systems, to ensure their safety. In the case of primary braking systems, electronic controls must either fail safely (resulting in a full service brake application) or access to full pneumatic control must be provided. As clarified, this provision was proposed in § 238.121(c) of the NPRM. See 62 FR 49803.

Paragraph (e) makes clear that the railroad shall comply with the elements of its hardware and software safety program that affect the safety of the passenger equipment. Failure to carry out a provision unrelated to the safety of the equipment is not implicated by this section, so as not to unnecessarily restrict the flexibility of the railroad. FRA adapted this requirement from that proposed in § 238.107(d) of the NPRM. See 62 FR 498901.

Overall, the requirements of this section reflect good practices that have led to reliable, safe computer hardware and software control systems in other industries. Computer hardware and software systems designed to these requirements may require a larger initial investment to develop, but experience in other industries has shown that this investment is quickly recovered by significantly reducing hardware and software integration problems and

minimizing trouble-shooting and debugging of equipment.

§ 238.107 Inspection, Testing, and Maintenance Plan

This section contains the general provisions requiring railroads to develop detailed plans for inspecting, testing, and maintaining Tier I equipment. (The inspection, testing, and maintenance plan for Tier II equipment is covered under § 238.503.) FRA's goal is for railroads to develop a set of standards to ensure that equipment remains safe and operates properly as it wears and ages, and to provide enough flexibility to allow individual railroads to adapt the maintenance standards to their own unique operating environment.

Paragraph (b) requires a railroad that operates Tier I passenger equipment subject to this part to develop and provide to FRA, if requested, particulars about its inspection, testing, and maintenance plan for that equipment, including the following:

- Inspection procedures, intervals and criteria;
- Testing procedures and intervals;
- Scheduled preventive maintenance intervals;
- Maintenance procedures; and
- Training of workers who perform the tasks.

Since FRA does not dictate the exact contents of the plan, individual railroads retain much flexibility to tailor the plan to their individual needs and experience. At the same time, FRA believes this requirement is important and will cause railroads to re-examine their inspection, testing, and maintenance procedures to determine that they are adequate to ensure that the safety-related components of their equipment are not deteriorating over time. This approach represents good business practice and in most cases merely formalizes what passenger railroads are already doing. However, FRA believes this section will provide valuable guidance to regional governments or coalitions attempting to establish new commuter rail service.

Paragraph (c) makes clear that the inspection, testing, and maintenance plan required by this section should not include procedures to address employee working conditions that arise in the course of conducting the inspections, tests, and maintenance set forth in the plan. FRA intends for the plan required by this section to detail only those tasks required to be performed in order to conduct the inspections, tests, and maintenance necessary to ensure that the equipment is in safe and proper condition for use. In proposing the

creation of these plans, FRA did not intend to enter into the area of addressing employee safety while conducting the inspections, tests, and maintenance covered by the plans. FRA is always concerned with the safety of employees while conducting their duties, but employee safety in maintenance and servicing areas generally falls within the jurisdiction of the United States Department of Labor's Occupational Safety and Health Administration (OSHA). It is not FRA's intent to oust OSHA's jurisdiction with regard to the safety of employees while performing the inspections, tests and maintenance required by this part, except where FRA has already addressed workplace safety issues, such as for blue signal protection. Therefore, in order to prevent any uncertainty as to FRA's intent, FRA has modified this section by eliminating any language or provision which could have been potentially perceived as displacing the jurisdiction of OSHA and has added a specific clarification that FRA does not intend for the plan required by this section to address employee safety issues that arise in the course of conducting the inspections and tests described. Consequently, the specific elements that FRA proposed to be included in the inspection, testing, and maintenance plan have been eliminated for the reasons noted above and because they were merely duplicative of the general requirements contained in paragraph (b) and are unnecessary.

It should also be noted that the general inspection, testing, and maintenance requirements previously proposed in the 1997 NPRM at paragraph (b) of this section (62 FR 49801-802) and the maintenance interval requirements proposed at paragraph (c) have been removed from this section in this final rule. The conditions and components previously proposed in paragraph (b) of this section have been moved to the periodic mechanical inspection contained in § 238.307(c). As the conditions previously proposed in this paragraph were intended to ensure that the railroads had an inspection scheme in place to ensure that all systems and components of the equipment are free of conditions that endanger the safety of the crew, passengers or equipment, FRA believes that a specific inspection interval would be better suited to address the general condition of the equipment and ensure the safety of railroad employees, passengers and equipment. In addition, the maintenance interval requirements have been modified and moved to the

periodic mechanical inspection requirements contained in § 238.307(b). Consequently, FRA has moved the general conditions maintenance interval provisions previously addressed in this section to the specific inspection requirements contained in subpart D of this final rule.

Section 238.109 Training, Qualification, and Designation Program

This section contains the training, qualification, and designation requirements for workers (that is, both railroad employees and contractors as defined in the section) who perform inspection, testing, and maintenance tasks. FRA believes that worker training, qualification, and designation are central to a safe operation.

Paragraph (a) requires railroads to adopt and comply with a training, qualification, and designation program for employees and contractors who perform safety-related inspection, testing, or maintenance tasks under this part. "Contractor," in this context, means "a person under contract with the railroad or an employee of a person under contract with the railroad to perform any of the tasks required by this part." FRA intends for the training, qualification, and designation requirements to apply not only to railroad personnel but also to contract personnel that are responsible for performing brake system inspections, maintenance, or tests required by this part. FRA believes that railroads are in the best position to determine the precise method of training that is required for the personnel they elect to use to conduct the required brake system inspections, tests, and maintenance. Although FRA provides railroads with broad discretion to develop training programs specifically tailored to the type of equipment they operate and the personnel they employ, FRA will expect railroads to fully comply with the training and qualification plans they develop. This section has been amended slightly from that proposed in the 1997 NPRM in order to stress that a critical component of this training is ensuring that a railroad's employees are aware of the specific Federal requirements that govern their work. Currently, many railroad training programs fail to distinguish Federal requirements from company policy.

Paragraph (b) contains a series of general requirements or elements which must be part of any training and qualification plan developed and implemented by a railroad. FRA believes that the elements contained in this section are specific enough to

ensure high quality training while being sufficiently broad to permit a railroad to develop a training plan that is best suited to its particular operation. This paragraph requires each railroad to identify the specific tasks related to the inspection, testing and maintenance of the brake systems operated by that railroad, develop written procedures for performing those tasks, identify the skills and knowledge necessary to perform those tasks, and specifically identify and educate its employees on the Federal requirements contained in this part related to the performance of those tasks. FRA believes that these requirements will ensure that, at a minimum, the railroad surveys its entire operation and has identified the various activities its employees perform. FRA intends for these written procedures and the identified skills and knowledge to be used as the foundation for any training program developed by the railroad.

This paragraph also makes clear that railroads are permitted to train employees only on those tasks that they will be responsible for performing. FRA tends to agree with several railroad commenters that there is no reason for individuals who solely perform simple air brake or mechanical tests and inspections to be as highly trained as those individuals responsible for conducting comprehensive brake or mechanical inspections or those individuals responsible for trouble-shooting, maintaining, and repairing the equipment. This paragraph also makes clear that a railroad may incorporate an already existing training program, such as an apprenticeship program. Thus, railroads would likely not need to provide much additional training, except training specifically addressing the requirements contained in this part and possibly refresher training, to its mechanical forces that have completed an apprentice program for their craft.

This paragraph also contains requirements that any program developed must include "hands-on" training as well as classroom instruction. FRA believes that classroom training by itself is not sufficient to ensure that an individual has retained or grasped the concepts and duties explained in a classroom setting. In order to adequately ensure that an individual actually understands the training provided in the classroom, some sort of "hands-on" capability must be demonstrated. FRA believes that the "hands-on" portion of the training program would be an ideal place for railroads to fully involve its labor forces in the training process. Appropriately trained and skilled employees would be

perfectly suited to provide much of the "hands-on" training envisioned by FRA. Consequently, FRA strongly suggests that railroads work in partnership with their employees to develop a training program which utilizes the knowledge, skills, and experience of the employees to the greatest extent possible.

This paragraph specifically requires that employees pass either a written or oral examination covering the equipment, tasks, and Federal regulatory requirements for which they are responsible as well as require that each individual deemed qualified to perform a task required by this final rule demonstrate "hands-on" capability to perform that task. This paragraph also contains requirements for conducting periodic refresher training and supervisor oversight of an employee's performance once training is provided. FRA believes both these requirements are essential to ensure that an individual continues to possess the knowledge and skills necessary to continue to perform the tasks for which the individual is assigned responsibility. Furthermore, employees must be periodically retrained in order to keep up with technological advances relating to braking systems that are constantly being made by the industry.

This paragraph also contains the requirements related to maintaining adequate records for establishing that individuals are capable of performing the tasks for which they are assigned responsibility. FRA believes that the record keeping requirements contained in this paragraph are the cornerstone of the training and qualification provisions. As FRA is not proposing specific training curriculums or specific experience thresholds, FRA believes that these record keeping provisions are vital to ensuring that proper training is being provided to railroad personnel. FRA believes these requirements provide the means by which FRA will judge the effectiveness and appropriateness of a railroad's training and qualification program. These provisions also provide FRA with the ability to independently assess whether the training provided to a specific individual adequately addresses the tasks for which the individual is deemed capable of performing, and will most likely prevent potential abuses by railroads to use insufficiently trained individuals to perform the necessary inspections, tests, and maintenance required by this rule. This paragraph makes clear that FRA intends to require that railroads maintain specific personnel qualification records for all personnel (including contract personnel) responsible for the

inspection, testing, and maintenance of train brake systems. This paragraph also makes clear that the records maintained by a railroad contain sufficient detail regarding the training provided in order for FRA to ascertain the basis for the railroad's determination.

FRA believes that many benefits can be gained from this increased investment in training. Better inspections will be performed, resulting in the running of less defective equipment, which translates to a better safety record. Equipment conditions requiring maintenance attention are more likely to be found while the equipment is at a maintenance or yard site where repairs can be more easily done. Trouble-shooting of brake and mechanical problems will take less time and more maintenance will be done right the first time, resulting in cost savings due to less rework.

Section 238.111 Pre-Revenue Service Acceptance Testing Plan

This section provides requirements for pre-revenue service testing of passenger equipment and relates to subpart G, which describes requirements for the procurement of Tier II passenger equipment and for a major upgrade or introduction of new technology that could affect safety systems of Tier II passenger equipment. Pre-revenue service acceptance tests are extremely important in that they are the culmination of all the safety analysis and component tests of a railroad's system safety program or other safety planning efforts. The pre-revenue service tests are intended to prove that the equipment can be operated safely in its intended environment and demonstrate the effectiveness of the system safety program or other safety planning undertaken by the railroad.

FRA has revised and clarified this section based on comments received in response to the NPRM. APTA believed that the proposed test program was excessive for equipment that has previous successful operating experience. It believed that an extensive pre-revenue service test program is needed only when a new type of equipment is placed in revenue service for the first time. Otherwise, APTA suggested a simple compatibility check with the infrastructure of a specific railroad is all that is needed when the railroad procures new equipment that has successful operating experience on other railroads. APTA claimed that FRA does not have the in-house expertise to approve plans, and that the need for FRA approval will delay the introduction of new equipment, causing a needless expense. APTA

recommended that the rule require a full test program only for the first time equipment is introduced into revenue service, that FRA not approve the test plans, and that FRA instead be invited by railroads to witness the pre-revenue service tests.

Amtrak, in its comments on the NPRM, expressly agreed with APTA. Amtrak believed FRA does not have the resources to support the burden that would be required by the proposal. Further, Amtrak believed there is no technical justification to require the formal testing proposed by FRA when a particular equipment order is nothing more than acquiring additional equipment identical to that purchased on a previous order. Amtrak suggested that formal testing be limited to new and untried types of equipment according to a long-standing AAR practice.

Metra commented that the rule should require railroads to submit their own pre-revenue service testing plans to FRA and invite FRA to witness the testing, instead of having FRA determine when and how railroads should conduct acceptance testing on their systems. Metra explained that railroads know their own systems and are more capable of designing testing plans compatible with their systems. Metra believed waiting for FRA testing and approval would cause needless delay and expense.

In its comments on the NPRM, the BRC believed this section to be wholly necessary because of the types of equipment being brought into service that generally do not comply with the safety appliance laws or the safety glazing regulations, or both. The BRC believed that this equipment must comply with applicable laws and regulations affecting the safety of passengers and railroad workers in order to be brought into service in the United Service. The BRC also recommended that the pre-revenue service testing plan be filed with FRA so that the plan will be available under the Freedom of Information Act (FOIA).

In proposing requirements for pre-revenue service acceptance testing, FRA did distinguish between passenger equipment that has previously been used in revenue service in the United States and that which has not. In lieu of the requirements proposed in § 238.213 (a) through (e) of the NPRM, paragraph (f) provided for an abbreviated testing procedure for passenger equipment that has previously been used in revenue service. See 62 FR 49763, 49802-3. Accordingly, FRA agrees that when a particular equipment order is nothing more than acquiring additional

equipment identical to that purchased on a previous order, there is no need for detailed testing requirements. This is reflected in § 238.111(a) of the final rule, which governs testing requirements for passenger equipment that has previously been used in revenue service in the United States. Each railroad is required to test such equipment only to ensure the compatibility of the equipment with the railroad's operating system. Although the railroad must keep a record of such testing and make it available to FRA for inspection and copying, no formal submission to FRA is required. (In this regard, FRA does not believe that the plan must be submitted to FRA for the purpose that it may be available to the public under FOIA, as that justification, in itself, would require virtually any railroad safety record to be submitted to FRA, whether or not FRA deems it necessary.) Further, no FRA approval is required prior to testing the equipment or placing it in revenue service. FRA expects the requirements of paragraph (a) to apply in the majority of situations a railroad places passenger equipment in service for the first time, and FRA has consequently placed this provision at the beginning of § 238.111 for ease of use by the regulated community.

As specified in the final rule, § 238.111(a) applies not only to the actual equipment which has previously been used in revenue service in the United States or to equipment which is manufactured identically thereto. Paragraph (a) also applies to equipment which is similarly manufactured to that equipment and has no material differences in safety-critical components or systems.

Paragraph (b) contains the requirements for a railroad placing passenger equipment in service for the first time on its system when the equipment has not previously been used in revenue service in the United States—in other words, when the equipment is not covered by paragraph (a). Each railroad must develop a pre-revenue service acceptance testing plan and submit the plan to FRA at least 30 days prior to beginning testing. Previous testing of the equipment at the Transportation Test Center, on another railroad, or elsewhere should be included in the submission.

The requirements of paragraph (b) distinguish between whether the passenger equipment intended for service is Tier I or Tier II passenger equipment, and FRA has decided to require approval of testing plans only for Tier II equipment. Although FRA disagrees with APTA's claim that FRA does not have the in-house expertise to

approve the testing plans, FRA is mindful of APTA's concern that the need for FRA approval of the plans may unnecessarily delay the introduction of new equipment. Further, not having endless resources, FRA has decided to focus its resources here on Tier II passenger equipment in light of the equipment's higher operating speed and greater potential risk. As a result, a railroad intending to place in service Tier I equipment under this paragraph does not need FRA approval of its test plan for the equipment or FRA approval to place the equipment in service. Of course, paragraph (b) does provide that for Tier I equipment the railroad must notify FRA to permit the agency to witness the testing (paragraph (b)(2)); comply with the testing plan (paragraph (b)(3)); document the results of the testing and make it available for FRA inspection (paragraphs (b)(4), (6)); and correct or otherwise compensate for safety deficiencies uncovered during the testing prior to introducing the equipment in revenue service (paragraph (b)(5)). Each railroad is also under an independent duty to comply with the other requirements of Part 238 and the railroad safety laws in general. In this regard, a railroad would have to obtain a waiver of FRA safety regulations through the formal procedures of 49 C.F.R. part 211 before introducing any equipment into service that does not comply with the safety appliance regulations or the safety glazing standards, for example. However, by operation of § 238.111, a railroad is not restricted from seeking a waiver of an FRA safety regulation under 49 C.F.R. part 211, nor is FRA restricted from granting such a waiver. Part 211 contains procedures to ensure that FRA grants a waiver of a safety regulation in the interest of employee and public safety.

For Tier II passenger equipment, paragraph (b) requires the railroad to follow the additional steps of obtaining FRA approval of the testing plan under the procedures specified in § 238.21 (paragraph (b)(1)); reporting the results of the testing to FRA (paragraph (b)(4)); agreeing to comply with any operational limitations imposed by FRA on the use of the equipment (paragraph (b)(5)); and obtaining FRA approval prior to placing the equipment in revenue service (paragraph (b)(7)). Under paragraph (b)(7), a railroad is not required to follow the formal requirements set forth in § 238.21.

Paragraph (c) applies only to Tier II passenger equipment. If a railroad plans a major upgrade or introduction of new technology in Tier II passenger equipment that has been used in

revenue service in the United States and that affects a safety system on such equipment, the railroad shall follow the procedures specified in paragraph (b) prior to placing the equipment in revenue service with such a major upgrade or new technology. This requirement is based on proposed §§ 238.603 (b) and (c) in the NPRM. See 62 FR 49823. FRA has integrated those proposed requirements into the section for clarity, as alluded to in the NPRM. See 62 FR 49785.

Overall, FRA believes the set of steps and the documentation required by § 238.111 are necessary to ensure that all safety risks have been reduced to a level that permits the equipment to be used in revenue service.

Section 238.113 Emergency Window Exits

This section represents the partial merger of NPRM § 238.235, emergency window exit requirements for Tier I passenger equipment, and NPRM § 238.439, as it concerned emergency window exit requirements for Tier II passenger equipment. FRA has combined these sections principally in response to the NTSB's comment on the proposed rule that these requirements should not be differentiated on the basis of train speed.

Paragraph (a)(1) requires that a single-level passenger car, other than a sleeping car or similarly designed car, have a minimum of four emergency window exits, either in a staggered configuration where practical or with one located in each end of each side of the car. A bi-level car shall have a minimum of four emergency window exits on each main level, configured as above, so that the car has a minimum total of eight emergency window exits.

FRA received several comments relating to the quantity of emergency window exits that the rule should require. First, the NTSB commented that specifying a minimum quantity requirement for emergency window exits in passenger cars is not sufficient. The NTSB believed that the requirement should be based on the capacity of the passenger car, the number of door exits, and the scientifically-determined time needed to completely evacuate the fully-loaded passenger car. Next, Talgo commented that passenger cars half the length of conventional cars should be required to have only two emergency window exits on each main level. Further, Bombardier commented that instead of limiting the application of this section to emergency window exits, FRA should apply the requirements of this section broadly to emergency exits—whether or not those exits are

windows—to permit flexibility and innovation in future passenger car designs. Bombardier added that any such requirement would be in addition to the requirement for side doors.

The final rule largely carries forward the NPRM's proposal, and the current Federal requirement in § 223.9(c) of this chapter for four emergency window exits in each passenger car. The requirement for a minimum number of window exits is important to ensure an unobstructed avenue of egress in a variety of accident scenarios, regardless of car capacity. Of course, as FRA has explained, the Volpe Center is working on an emergency evacuation performance requirement for passenger cars to determine the number of total exits necessary to evacuate the maximum passenger load in a specified time for various situations. Further, through the APTA PRESS effort, FRA understands that APTA is developing a systems approach to emergency egress similar to that which Bombardier has suggested in its comments. FRA recognizes the merit such approaches have and will consider these alternative approaches in Phase II of the rulemaking.

Paragraph (b) requires, as specified, each emergency window exit in a new passenger car, including a sleeping car, to have a minimum unobstructed opening with dimensions of 26 inches horizontally by 24 inches vertically. In the NPRM, FRA invited comments as to what size requirements for emergency window exits FRA should impose in the final rule. FRA had proposed that Tier I equipment have a minimum, unobstructed emergency window exit opening of 24 inches horizontally by 18 inches vertically, and that Tier II equipment have a minimum, unobstructed emergency window exit opening of 30 inches horizontally by 30 inches vertically. The Tier II Equipment Subgroup, including Amtrak, had recommended the latter requirement for application to Tier II equipment. However, the full Working Group advised against imposing such a requirement on Tier I equipment. FRA had explained in the NPRM that, although it would prefer that all emergency window exits afford the larger opening, the Tier I equipment proposal provided the minimum opening needed for a fully-equipped emergency response worker to gain access to the interior of a train.

The NTSB commented that the horizontal and vertical openings of emergency window exits should be the same for both tiers of equipment, as the speed at which the equipment travels should not matter. The NTSB stated that

the emergency window exit dimensions should be determined by the size dimensions needed: (1) To extricate an injured person from the passenger car; and (2) to allow an emergency responder fitted with a self-contained breathing apparatus to enter the passenger car. The NTSB noted that one of the typical adult backboards used by emergency responders to evacuate injured persons is 24 inches wide by 72 inches long, and therefore may not clear a window 24 inches wide. (The NTSB did note that the other typical adult backboards measure 16 inches wide by 72 inches long, and 12 inches wide by 84 inches long. The NTSB also stated that a typical steel basket stretcher used by emergency responders measures about 23 inches horizontally by 8 inches deep by about 81 inches vertically.) The NTSB further noted the concern that if a car derails to the extent that the normal vertical dimension becomes the horizontal dimension, the backboard must be tilted to fit through the opening. (During Working Group discussions, it was noted that for this to happen, the car must come to rest on its end.) Moreover, the NTSB stated that an emergency responder with a self-contained breathing apparatus may have difficulty entering an 18-inch vertical opening.

FRA agrees that the emergency window exit size requirements should be the same for both tiers of equipment. The final rule requires that emergency window exits have a minimum unobstructed opening with dimensions 26 inches horizontally by 24 inches vertically. This requirement only applies to new cars, however, as specified in paragraph (b). FRA recognizes that these dimensions are greater than those proposed for Tier I passenger equipment (and smaller than those proposed for Tier II passenger equipment).

A review of emergency window exit sizes on the nation's rail passenger car shows a wide variation in window size. Differences in size are not necessarily attributable to the age of the passenger cars: On certain railroads, some older passenger cars have smaller emergency window exits than do newer passenger cars; whereas, on other railroads, some newer passenger cars have smaller emergency window exits than do older passenger cars. Staff from the Boston, Massachusetts, and Los Angeles, California, fire departments recommended, upon DOT's inquiry, that emergency window exits provide at least a 26-inch horizontal opening to maneuver a 24-inch wide stretcher into and out of the window. They also expressed concern whether an 18-inch

vertical opening would be large enough to allow an emergency responder wearing a self-contained breathing apparatus to fit through the window. United States Department of Defense MIL-STD-1472E (October 31, 1996), which contains design criteria for human engineering, provides dimensions for rectangular access openings for male body passage as differentiated by the amount of clothing worn. For side access, MIL-STD-1472E, section 5.7.8.3 provides that openings shall be not less than 26 inches in depth (vertical) and 30 inches in width (horizontal) for a male wearing light clothing. Further, the standard provides that openings shall be not less than 29 inches in depth and 34 inches in width for a male wearing bulky clothing. (This section of the military standard has been placed in the public docket for this rulemaking.)

On the basis of the comments and information received following publication of the NPRM, FRA believes that an emergency window exit vertical opening of 18 inches is not sufficient for new rail cars. The emergency window exit size requirements contained in this final rule provide a more reasonable dimension for passage of large, fully-clothed persons, including emergency response personnel with fire gear. The dimensions are practicable in light of the design of many passenger cars in the United States.

FRA explained in the NPRM that safety may be advanced by staggering the configuration of emergency window exits so that the exits are located diagonally across from each other on opposite sides of a car, instead of placing them directly across from each other. FRA invited comment on this issue, as well as on the concern that the seat arrangement of passenger cars may block access to and the removal of emergency window exits. The NTSB commented that emergency window exits should be staggered rather than opposite each other, and they must also be distributed as uniformly as practical to allow for passenger distribution. The rule will require staggering where practical, but other considerations must be taken into account, including the need to provide an unobstructed exit without diminishing normal seating capacity. Railroads should be mindful that if the ends of a car are crushed in a collision, then the window exits located at the car's ends may be rendered inoperable. In this regard, FRA's use of the term "in each end" in paragraph (a)(1) refers to the forward and rear ends of a car as divided in its center—and does not literally refer to the extreme forward and rear ends of a

car nor require that emergency window exits be placed at the extreme ends of a car.

FRA is requiring that each sleeping car, and any similarly designed car having a number of separate compartments intended to be occupied by passengers or train crewmembers, have at least one emergency window exit in each compartment. An example of a similarly designed car subject to this requirement is a crew dormitory car. If an emergency window exit is not provided in individual sleeping compartments, occupants of those compartments may have difficulty reaching the car's doors quickly in an emergency, especially if the car's interior passageways become blocked or obscured by smoke. An emergency window exit is necessary in each compartment to enable occupants to quickly exit the car in a life-threatening situation, as when the car is submerged. FRA notes that, for purposes of this section, a restroom is not a compartment specifically required to have an emergency window exit.

Paragraph (a)(3) requires that each emergency window exit be designed to permit rapid and easy removal during an emergency situation without requiring the use of a tool or other implement. In the NPRM, FRA had specified that the emergency window exit must be easily operable by a 5th-percentile female without requiring the use of a tool or other implement. In response to the proposal, Bombardier commented that the feasibility and practicability of making the emergency exit operable by a 5th-percentile female is not known at this time. Bombardier recommended FRA more fully examine the feasibility of designing and maintaining passenger cars to meet this requirement before it is made a rule. In the final rule, FRA believes it appropriate not to specify a requirement at this time for the ease of operability of an emergency window exit by a 5th-percentile female. In Phase II of the rulemaking, FRA will evaluate with the Working Group whether such a concept should be reintroduced. Instead, FRA has decided to incorporate into the final rule language from the definitions of "emergency window" found in 49 CFR parts 223 and 239—that is, each emergency window must be designed to permit its rapid and easy removal during an emergency situation—and specifically require that such rapid and easy removal of the window be able to be accomplished without requiring the use of a tool or other implement.

Paragraph (c) is reserved for emergency window exit marking and operating instruction requirements.

These requirements are currently provided in the rule on passenger train emergency preparedness. See 63 FR 24630. In Phase II of the rulemaking, FRA will consider integrating into this part (part 238) the emergency window exit marking and operating instruction found in parts 223 and 239 of this chapter. Additionally, FRA will consider revising those requirements as necessary.

Section 238.115 Emergency Lighting

Experience gained during emergency response to several passenger train accidents indicates that emergency lighting systems either did not work or failed after a short time, greatly hindering rescue operations. This section requires that passenger cars ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, be equipped with emergency lighting providing at least an average illumination level of 1 foot-candle at floor level adjacent to each exterior door and each interior door providing access to an exterior door (such as a door opening into a vestibule). In addition, the emergency lighting on such cars must provide an illumination level of at least an average of 1 foot-candle at floor level along the center of each aisle and passageway, and a minimum of 0.1 foot-candle at floor level at any point along the center of each aisle and passageway. The cars must also be equipped with a back-up power feature capable of operating the lighting for a minimum of 90 minutes after loss of normal power with no more than a 40% loss of the prescribed illumination levels.

In the NPRM, FRA proposed requiring for both passenger cars and locomotives a minimum emergency lighting illumination level of 5 foot-candles at floor level for all potential passenger and crew evacuation routes from the equipment. See 62 FR 49803. FRA explained that its proposal was not a recommendation of the Working Group, as FRA believed an illumination level higher than that suggested by members of the Working Group was necessary for passengers to locate emergency exits, read instructions for operation of the exits, and operate the exits. See 62 FR 49764. FRA did request comments whether the lighting intensity requirement need be 5 foot-candles at floor level for all potential evacuation routes if the rail vehicle has a combination of lower intensity floor proximity lighting, similar to that used on aircraft to mark the exit path, and higher intensity lighting at the vehicle's exits. FRA also proposed applying the emergency lighting requirements to

rebuilt passenger equipment, and noted that it was considering applying these requirements to existing passenger equipment sooner than when the equipment is rebuilt.

In response to FRA's proposal, APTA commented that requiring a minimum emergency lighting illumination level of 5 foot-candles is excessive. APTA believed that roughly a five-fold increase in battery capacity would be necessary to comply with the proposed illumination standard when combined with the two-hour minimum duration requirement proposed in the rule. APTA stated that a minimum emergency lighting illumination level of 1 foot-candle is adequate for new equipment, based on recent light level measurements taken on passenger coaches by Volpe Center personnel. APTA noted that a survey in support of its APTA PRESS efforts shows emergency lighting illumination levels to be between approximately 0.2 foot-candles and 1 foot-candle on existing passenger equipment. APTA observed that even an illumination level of less than 1 foot-candle measured at the floor can allow for an orderly evacuation of a passenger coach with well-marked exits.

In regard to applying the requirements of this section to existing passenger equipment, APTA suggested imposing an emergency lighting illumination level of less than 1 foot-candle on such equipment to avoid an expensive retrofit. APTA further recommended that the rule allow the emergency lighting illumination level to decay over the proposed two-hour duration it would be required to operate, and APTA suggested allowing the illumination level to degrade to no less than 50% of the original illumination level after two hours. In addition, APTA noted that emergency lighting systems in conventional locomotive cabs are radically different from those in passenger cars, and APTA asked FRA to reconsider how it would apply emergency lighting requirements inside locomotive cabs.

In commenting on this proposal, the BRC stated that the requirements for emergency lighting must be phased into existing passenger equipment sooner than when it is rebuilt. The BRC explained that for passengers it would be far better to have cars equipped with emergency and exit lighting to eliminate many of the hazards in getting out of the cars, and that there is no justification or analysis in the record for delaying the implementation of the requirements in existing passenger cars.

Metra, in its comments on this proposal, stated that a requirement for

an emergency lighting illumination level of 5 foot-candles would be unnecessarily bright and costly. Metra recommended that the illumination level be set at 0.5 foot-candle. Further, Metra suggested that for new passenger equipment the requirement be modified to apply only to new orders placed after January 1, 1998, so as to avoid costs associated with change orders and dual standards on ongoing orders that will be delivered both before and after January 1, 1998. Finally, the Omniglow Corporation (Omniglow) commented in response to the NPRM that to effectively address an emergency situation where lives are at stake, each train exit should be equipped with emergency lighting.

In light of these comments and after further analysis, FRA has revised the requirements of this section in several ways from those originally proposed in the NPRM. First, under the final rule, the requirements of this section apply only to passenger cars—and not to passenger locomotives as proposed in the NPRM. As MU locomotives and cab cars that transport passengers are considered passenger cars under this rule, however, the practical effect of this revision is not to apply the specific emergency lighting requirements in this rule to conventional passenger locomotives. Moreover, the issue of specifying emergency lighting requirements for conventional locomotives as a whole, taking into account their unique characteristics, has been placed before the RSAC Locomotive Crashworthiness Working Group for its consideration.

Second, the requirements of the final rule do not apply to rebuilt passenger equipment. FRA is seeking a broader approach to implementing emergency lighting requirements in existing passenger cars, whether or not the cars are rebuilt. To accomplish this, FRA does not necessarily expect that existing passenger cars will be required to meet the area lighting standard specified for new equipment. However, FRA desires that achievable emergency lighting enhancements to existing passenger cars will be implemented over a reasonable period of time. In the second phase of the rulemaking, FRA will evaluate the anticipated APTA PRESS standard for implementing emergency lighting requirements in existing passenger cars with a view to incorporating the APTA standard into this Federal standard.

Third, as provided in paragraphs (b)(1)–(3) of the final rule and modified from the NPRM, this section prescribes the minimum emergency illumination level for new passenger cars as a 1 foot-candle average at floor level adjacent to each exterior door and each interior

door providing access to an exterior door (such as a door opening into a vestibule), a 1 foot-candle average measured 25 inches above the floor level along the center of each aisle and passageway, and a minimum of 0.1 foot-candle measured 25 inches above the floor level at any point along the center of each aisle and passageway. These illumination levels are based on the emergency lighting illumination levels specified in Section 5–9.2.1 of the National Fire Protection Association's (NFPA) "Life Safety Code Handbook," Seventh Ed. (a copy of this section has been placed in the public docket for this rulemaking) and the Illuminating Engineering Society Lighting Handbook. Specifying the measurement of the emergency lighting illumination level at the floor for doors is intended to permit passengers and crewmembers to see and negotiate thresholds and steps typically located near doors. Specifying the measurement of the emergency lighting illumination level at 25 inches above the floor for aisles and passageways is intended to permit passenger and crewmembers to see and make their way past obstacles as they exit a train in an emergency, as demonstrated by tests conducted by the Volpe Center. At the same time, specifying that the illumination level be measured above the floor for aisles and passageways recognizes that light emitted from lighting fixtures placed on the sides of passenger cars may be obstructed, as by car seats, before the light reaches the floor, and, in this regard, the rule provides greater flexibility to railroads in the placement of lighting fixtures. FRA notes that the permanency of this area lighting standard will be dependent on successful resolution of issues related to emergency signage, exit path marking, and egress capacity that are being progressed toward resolution through the APTA PRESS Task Force and the Volpe Center, as noted below, as a predicate for completion of the standards in the second phase of this rulemaking.

FRA believes that the emergency lighting illumination levels specified in this section will enable the occupants of rail cars to discern their immediate surroundings and thereby minimize or avoid panic in an emergency. In this regard, a lighting demonstration was conducted in a SEPTA rail car in March 1998, and in the judgement of the FRA participants it showed that these illumination levels appear sufficient. These emergency lighting illumination levels are achievable for rail cars. In fact, the NFPA 101 specifications for emergency lighting illumination levels,

noted above, are recommended for use in rail transit cars through NFPA 130, Section 5-5.3.

In the second phase of the rulemaking, FRA will focus on augmenting the emergency illumination level specified in this section by including requirements for lighted signage and exit path marking, as touched on above. Through a research study conducted by the Volpe Center, FRA has been investigating emergency lighting requirements as part of a systems approach to effective passenger train evacuation. This approach takes into consideration the interrelationship between features such as the number of door and window exits in a passenger car, lighted signs that indicate and facilitate the use of the door and window exits, and floor exit path marking, in addition to the general emergency lighting level in a car. FRA will also examine the APTA PRESS standard on emergency lighting, when final, to determine whether the standard satisfactorily addresses matters related to emergency signage, exit path marking, and egress capacity so that FRA does not have to revisit the issue of area lighting with a view toward increased illumination levels. In the interim, FRA will entertain proposals to utilize alternative methods of providing at least an equivalent level of emergency illumination to that prescribed in this rule.

FRA has further revised the requirements of this section from those proposed in the NPRM by shortening the required operation time period of the emergency lighting, and by permitting the emergency lighting illumination level to degrade over time, as well. Specifically, the final rule requires a passenger car to be equipped with a back-up power feature capable of operating the lighting for a minimum of 90 minutes after loss of normal power with no more than a 40% loss of the prescribed illumination levels. As a result, illumination levels shall be permitted to decline, as appropriate, from 1 ft-candle to 0.6 foot-candle, and from 0.1 foot-candle to 0.06 foot-candle. The lighting decay permitted here is also based on that specified in Section 5-9.2.1 of the NFPA's "Life Safety Code Handbook," cited above. Operation of emergency lighting for an extended time is particularly necessary in the event of passenger train rescue operations in remote locations. Fully-equipped emergency response forces can take an hour or more to arrive at a remote accident site, and additional time would be required to deploy and reach people trapped or injured in a train. Even passenger train accidents in urban areas

can pose significant rescue problems, especially in the case of tunnels, nighttime operations, and operations in inclement weather.

This section also requires the emergency lighting back-up power system to be able to operate in all orientations within 45 degrees of vertical and after experiencing a shock due to a longitudinal acceleration of 8g and vertical and lateral accelerations of 4g. 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. FRA originally considered that the back-up power system be capable of operation within a vehicle in any orientation. However, members of the Working Group advised that some battery technologies utilize a liquid electrolyte which can leak when the battery is tilted.

FRA invited commenters to address whether the back-up power system should be made capable of operation within a vehicle in any orientation, see 62 FR 49764; and, in response, the BRC commented that the back-up power system must be capable of operating in any orientation since railcars do not always remain upright when they derail. The BRC believed that the fact batteries may have a liquid electrolyte which can leak when the battery is tilted does not excuse railroads from obtaining proper batteries that will function in any orientation.

In the final rule, FRA is not requiring that the back-up power system be capable of operating in any orientation, and instead FRA is retaining the proposal in the NPRM that the system be capable of operating in all equipment orientations within 45 degrees of vertical. FRA will further examine this issue in the second phase of the rulemaking, and FRA is aware of a more costly battery technology utilizing a gel that should not leak when turned in any orientation. However, even if the back-up power system could operate when turned in any direction, FRA recognizes that a derailment of the magnitude that would cause such a situation would potentially destroy the battery box as a whole or sever the cables connecting the battery to the emergency lighting fixtures, or both. In this regard, FRA believes it more important to focus in the second phase of the rulemaking on addressing the NTSB's recommendation to require reliable emergency lighting fixtures in passenger cars, each fitted with a self-contained independent power source (R-97-17). (See NTSB/RAR-97/02) Section 238.115 does permit continued use of battery power

common to all emergency lighting circuits in a particular car.

FRA notes, however, that the concept of a power source at each fixture, as a regulatory requirement, is novel. FRA findings in recent accidents support the NTSB's implied concern that placement of electrical conduits and battery packs below the floor of passenger coaches can result in damage that leads to the unavailability of emergency lights precisely at the time they are most needed. However, from initial investigation it is not certain whether current "ballast" technology provides illumination of sufficient light level quality with reliable maintainability. FRA presented the issue of placing an independent power source at each emergency lighting fixture to the Passenger Equipment Safety Standards Working Group at a meeting in December, 1997. FRA will aggressively pursue this option for more reliable emergency illumination in the second phase of the rulemaking, and FRA will also work with APTA PRESS on this issue.

Section 238.117 Protection Against Personal Injury

This section contains a general requirement to protect passengers and crewmembers from moving parts, electrical shock and hot pipes. This section extends to passenger equipment not classified as locomotives the protection against personal injury which applies to locomotives under 49 CFR 229.41. The requirements represent common-sense safety practice; reflect current industry practice; and should result in no additional cost burden to the industry. Although FRA received no specific comments on this section, FRA has modified this section to make clear that its requirements do not apply to the interior of a private car, consistent with FRA's overall approach to private cars in this rule. The protections of this section would apply, of course, to rail employees and others who may inspect or perform work on the exterior of a private car.

Section 238.119 Rim-Stamped Straight-Plate Wheels

This section addresses the NTSB's safety recommendation concerning the use of rim-stamped straight-plate wheels on tread-braked rail passenger equipment. Following its investigation of a January 13, 1994 Ringling Bros. and Barnum & Bailey Circus train derailment which killed two circus employees, the NTSB determined that the probable cause of the derailment was the fatigue failure of a thermally damaged straight-plate wheel due to

fatigue cracking that initiated at a stress raiser associated with a stamped character on the wheel rim. See 62 FR 49743; NTSB/RAR-95/01. Noting that tread braking is a significant source of wheel overheating and thermal damage; straight-plate wheels are vulnerable to thermal damage; and rim-stamping provides a stress concentration for crack initiation, the NTSB recommended that FRA "[p]rohibit the replacement of wheels on any tread-braked passenger railroad car with rim-stamped straight plate wheels." (Class II, Priority Action) (R-95-1).

In the NPRM, FRA stated that because a wheel having a rim-stamped straight-plate character is a sufficient safety concern in itself, FRA proposed extending the NTSB's safety recommendation to apply to all such wheels used on passenger equipment regardless whether the equipment were tread-braked or not. See 62 FR 49743, 49803. Further, FRA proposed addressing separately the use of such wheels on passenger equipment other than private passenger cars—for which there would be an immediate prohibition on the use of the wheels—in distinction to the use of such wheels on private cars—for which there would be a prohibition on the wheels' use as replacement wheels. See 62 FR 49743-4, 49803.

Based on comments received in response to the proposed rule, and after further analysis, FRA has modified the requirements of this section from those proposed in the NPRM. In the final rule, the restrictions on the use of rim-stamped straight-plate wheels apply only to such wheels use on tread-braked passenger equipment. AAPRCO, in its comments on the NPRM, stated that the proposed section was overly broad in prohibiting rim-stamped straight-plate wheels from being used as replacement wheels on private cars operated in a passenger train. Citing the above-noted NTSB report, AAPRCO explained that the only detected problem involving the use of rim-stamped straight-plate wheels occurred when such wheels were subjected to tread braking. AAPRCO believed that there is no known problem involving the use of such wheels on passenger equipment that is disc-braked and, therefore, not subject to heating. Accordingly, AAPRCO recommended limiting the prohibition against using rim-stamped straight-plate wheels as replacement wheels on private cars to those wheels that are tread-braked.

FRA notes that the stamping of manufacturers' marks on railroad wheel rims introduces stress concentrations in the wheel rims. Such stress risers can help originate cracks as the wheel is

subjected to the low-cycle thermal fatigue of repeated tread-brake applications. As freight equipment operates with tread brakes, the AAR has discontinued rim stamping in order to preclude wheel failures due to cracking initiated at the stamp marks.

Disc brakes use a caliper and pad arrangement (like a bicycle brake) which operates on (squeeze) a disc which is affixed to the axle of a rail car, or to the back face of the wheel in a "cheek" mounted scheme, to provide retarding force. Disc brakes introduce no heat into the rim, since the heat is generated by the friction between the caliper pads and the disc. This condition is true only if the strategy to stop a vehicle relies solely on discs without tread-brake assistance.

Disc-braked rail cars sometimes have tread brakes which are used as parking brakes. These tread brakes may be applied periodically while the train is running, using low cylinder forces, in order to clean the wheel tread surface of oxides and debris which can interfere with the ability of the wheel to make an electrical connection with the rail for the purposes of shunting the track circuits to activate signals. This action is typically of short duration and is controlled by automatic circuitry (snow brakes) and should not pose a threat to the integrity of the wheels.

Braking strategies sometimes involve a combination of disc and tread braking to achieve desired deceleration rates. For example, Amtrak's AMFLEET I and II cars use such a combination—approximately 40% tread and 60% disc. In such a case, the wheels are tread-braked every time the vehicle comes to a stop, as opposed to the lower energy snow braking described above.

Straight plate wheels are well-known to be much more susceptible to thermal damage than curved or S-plate wheels. Plate curvature permits radial breathing of the rim as it is heated, resulting in lower rim stresses. The straight-plate wheel is much stiffer radially and stresses in these wheels are therefore greater for the same thermal input. If straight-plate wheels experience tread braking, or if tread brakes are used in the event of disc brake failure, the possibility exists for wheel thermal damage. However, the use of straight-plate, rim-stamped wheels should not pose a safety threat if the wheels are never tread-braked.

Because the use of straight-plate, rim-stamped wheels should pose no safety threat if the wheels are never tread-braked, the requirements of this section do not apply to such wheels used in such circumstances. Moreover, as provided in paragraph (c), if the wheels

are in fact tread-braked but only in a limited manner to clean the wheel surface, the requirements of this section likewise do not apply. However, FRA hereby makes clear that the requirements of this section apply to the use of straight-plate, rim-stamped wheels when the wheels are subjected to tread braking in any combination with disc brakes for the purpose of slowing the passenger equipment.

The second principal change in the final rule from the NPRM provides particular consideration for the use of Class A rim-stamped, straight-plate wheels mounted on inboard-bearing axles on commuter passenger equipment. In commenting on the NPRM, APTA noted that a number of commuter railroads are currently operating—or are in the process of implementing service with—Bombardier-manufactured bi-level coaches that are equipped with Class A rim-stamped, reverse-plate wheels. APTA specified that the affected commuter railroads operate 182 passenger coaches equipped with these wheels and consist of the Southern California Regional Rail Authority (Metrolink), San Diego Northern Railway, Tri-County Commuter Rail Authority, Dallas Area Rapid Transit, and the San Joaquin Railroad Commission. APTA explained that reverse-plate wheels are considered a hybrid of the straight-plate design and therefore subject to the prohibition of this section. APTA added that these wheels have an average service life of five years. According to APTA, imposing this prohibition on the affected commuter rail operations will dramatically reduce or terminate commuter rail operations while replacement wheels are procured and installed. APTA stated that Class A reverse-plate wheels have a safe history of usage with no indication of wheel cracks caused by rim stamping, and that failures of Class B and C wheels of a true straight-plate design led to the NTSB's recommendation here. Based on these differences, APTA recommended that FRA allow Class A, rim-stamped reverse-plate wheels to continue in service.

FRA has considered APTA's comments and notes that the rim-stamped "reverse"-plate wheels in issue are indeed straight-plate wheels. The "reverse" connotation refers to the orientation (angle) of the wheel plate with respect to the axle. Passenger wheelsets have inboard bearings—that is, the bearings are located between the wheels on the axle. Freight wheelsets are outboard-bearing in that the wheels are mounted between the bearings. The

wheel plate is pitched one way or the other in either circumstance so that the wheel flanges end up being the same distance apart. In this way, either wheelset can transverse the same standard gage track.

From discussions with APTA, FRA understands that these Class A, rim-stamped straight-plate wheels are installed on rail cars weighing approximately 115,000 pounds, utilizing blended dynamic and friction braking. The friction-based portion of the braking system in turn is composed of approximately 67% tread braking, and 33% disc braking. FRA further understands that, when properly used, the extended-range dynamic brake can slow the vehicle from 90 mph—its top operating speed—to less than 10 mph with no friction (pneumatic) braking applied, and that this is the recommended method of operating these rail cars. The service brake rate is 2.0 mph/sec and the emergency rate is 2.5 mph/sec. In combination with the wheel slip/slide protection system provided for these cars, FRA believes that the wheels on these rail cars should be subjected to limited thermal input.

Further, FRA notes that wheels are generally classified as L, A, B, or C depending on the carbon content of the wheel material. The amount of carbon determines the hardness and strength of the steel. A Class A wheel has a lower carbon content, and correspondingly lower hardness and strength than a Class B or C wheel. Lower hardness means that the wheel has increased ductility or improved ability to resist cracking (fracture toughness). This is why Class L and A wheels are recommended for severe braking conditions. However, since these wheels are “softer,” heavy wheel loads will result in poor wear performance, which is why they are recommended only for light to moderate wheel loads. Class B and C wheels (with more carbon and increased hardness) exhibit good wear behavior, but are more prone to cracking. Railroads choose the wheel type for a particular class of service based on its operating characteristics.

As reflected in paragraph (a)(2), FRA believes that the commuter railroads operating vehicles with Class A, rim-stamped straight-plate wheels mounted on inboard-bearing axles—i.e., reverse-plate wheels—may continue to do so provided the railroads do not modify the operation of the vehicles in any way that would result in increased thermal input to the wheels during braking. As a result, vehicles equipped with these wheels may not operate at speeds exceeding their current maximum operating speeds. Further, these wheels

may not be placed on different (especially heavier) rail vehicles. Provided the conditions for continued use of the wheels are met, however, a railroad may continue to use the wheels until it exhausts its stock of replacement wheels held as of May 12, 1999, which is the date of this final rule's publication. FRA understands that the manufacturer of these wheels has already started to stamp the wheels on their hubs, instead of on their rims, and FRA believes that the railroads' inventory of such rim-stamped wheels will be exhausted within the next 18 months. Once a commuter railroad's inventory of Class A, rim-stamped straight-plate wheels is exhausted, each such wheel must be replaced at the end of the wheel's service life with a wheel that is not rim-stamped.

In commenting on the NPRM, Talgo suggested clarifying the requirements of this section to state that the stamping of characters on the rim of a wheel is prohibited due to dangers associated with stress concentration. According to Talgo, if indeed the purpose of this section is to address rim-stamping itself, then the rule should be revised to address all types of wheels and not just straight-plate wheels. FRA does recognize that the stamping of manufacturers' marks on railroad wheel rims introduces stress concentrations in the rims, and, all things being equal, manufacturers should stamp wheels on their hubs instead of on their rims. Yet, FRA is concerned in particular with rim-stamped straight-plate wheels because, as noted above, a straight-plate wheel design is more susceptible to thermal damage than a curved wheel design. The plate curvature permits radial breathing of the rim as it is heated, resulting in lower rim stresses.

Similar to the proposal in the NPRM, the final rule allows rim-stamped, straight-plate wheels on tread-braked private cars to continue in service throughout the life of each wheel. However, as provided in paragraph (b), such wheels may not be used as replacement wheels on these cars. As explained in the NPRM, FRA recognizes that private cars are generally not highly utilized in comparison to intercity or commuter passenger equipment, and Amtrak imposes its own safety requirements on the use of such cars in its trains. See 62 FR 49743–4.

In commenting on the NPRM, a member of the public stated that many private car owners have a substantial investment in rim-stamped straight-plate wheels, and precluding their installation would consequently place a financial burden on many private car owners. This commenter requested that

a provision be added to the rule to allow private car owners to install such wheels on their cars after January 1, 1998,—which FRA proposed as the effective date for this section—provided the wheels were owned by that date. In this regard, FRA notes that Amtrak has issued a letter to private car owners dated September 19, 1995, stating that after June 30, 2000, Amtrak will decline to move any tread-braked passenger cars with rim-stamped straight-plate wheels. In addition, Amtrak stated in the same letter that it would not accept any new applications for wheel change out with rim-stamped straight-plate wheels, regardless of the brake type. Amtrak's letter referenced the NTSB's safety recommendation noted in this section.

Since Amtrak is the chief carrier of private rail cars, the ability of a private rail car owner to use rim-stamped, straight-plate wheels will be significantly affected independent of the requirements of this rule. Further, allowing such wheels to continue in use until a car owner's inventory of the wheels is depleted would prolong the use of such wheels for potentially decades. FRA believes that the rule allows due consideration for private rail car owners in allowing them to continue using tread-braked private rail cars equipped with rim-stamped, straight-plate wheels throughout the life of each wheel, while recognizing that, as a whole, the wheels are subject to greater thermal input when in use and are more susceptible to cracking than the commuter railroad wheels discussed above. Moreover, FRA notes that under the definition of “passenger equipment” in this rule, a private rail car not operated in a train with a passenger car, such as in a freight train, or in a consist of private rail cars, is not subject to the requirements of this rule. (See above discussion of passenger equipment in § 238.5.). In addition, the final rule does not apply to tourist railroads, and a private rail car may therefore operate on such railroad without complying with the requirements of this rule. See § 238.3.

Subpart C—Specific Requirements for Tier I Passenger Equipment

Section 238.201 Scope.

This subpart contains specific requirements for railroad passenger equipment operating at speeds not exceeding 125 mph. This subpart contains various structural standards (§ 238.203Bstatic end strength; § 238.205—anti-climbing mechanism; § 238.207—link between coupling mechanism and car body; § 238.209—forward-facing end structure of

locomotives; § 238.211—collision posts; § 238.213—corner posts; § 238.215—rollover strength; § 238.217—side structure; § 238.219—truck-to-car-body attachment; and § 238.223—fuel tanks). These structural standards do not apply to passenger equipment if used exclusively on a rail line (A) with no public highway-rail grade crossings, (B) on which no freight operations occur at any time, (C) on which only passenger equipment of compatible design is utilized, and (D) on which trains operate at speeds no higher than 79 mph.

In general, except for the static end strength standards (§ 238.203) and as otherwise provided in this subpart, the requirements of this subpart apply only to passenger equipment ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002. That is, where no specific date or dates are provided in the regulatory text for a particular section, such as § 238.225 (Electrical system), these dates apply to that section's requirements. Of course, certain existing Federal requirements, such as the window safety glazing standards in part 223 of this chapter that are referenced in § 238.221 (Glazing), continue to apply by their own force.

The rule does provide that passenger equipment placed in service for the first time on or after September 8, 2000, unless otherwise provided in the cited sections, must meet the minimum structural requirements specified in: § 238.205(a) (anti-climbing mechanism); § 238.207 (link between coupling mechanism and car body); and § 238.211(a) (collision posts). Further, as specified in detail below, any such equipment in use on or after November 8, 1999 must also meet the static end strength standards specified in § 238.203. These four particular requirements are virtually identical to existing Federal requirements, found in 49 CFR § 229.141(a)(1)–(4), that apply to MU locomotives built new after April 1, 1956, and operated in trains having a total empty weight of 600,000 pounds or more. These requirements reflect the common construction practices for passenger equipment currently in service in the United States, and FRA believes they are minimum safety requirements. FRA notes that the 600,000-pound consist weight threshold for purposes of 49 CFR § 229.141 is not an appropriate distinction to apply to passenger equipment operated on the general system, intermingled with equipment of more substantial strength; and, as a result, part 238 contains no such consist weight distinction. In this regard, FRA notes that through this final rule it is amending the application of 49

CFR § 229.141 so that its requirements will not apply to passenger equipment subject to part 238.

In addition to these four structural requirements, the rule also requires that passenger equipment comply with other structural requirements specified in: §§ 238.205(b) (anti-climbing mechanism for locomotives); 238.209 (forward-facing end structure of locomotives); 238.211(b) (collision posts for locomotives); 238.213 (corner posts); 238.215 (rollover strength); 238.217 (side structure); 238.219 (truck-to-car-body attachment); and 238.223 (fuel tanks). These requirements apply to passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, unless otherwise provided in the cited sections. FRA notes that, under special circumstances, it will allow the placement in service of passenger equipment not meeting these structural requirements if the equipment was in fact ordered within September 8, 2000 but not placed in service until after September 9, 2002. In such case, the railroad must provide documentation to the satisfaction of the Associate Administrator for Safety that demonstrates the special circumstances accounting for the delay in placing the equipment in service.

Structural Standards for Existing Equipment

The final rule requires that all passenger equipment (other than locomotives that comply with an alternative standard as specified, private cars, unoccupied vehicles operating at the rear of a passenger train, or equipment used in non-commingled service, as discussed below) in use on or after November 8, 1999 have a minimum static end strength of 800,000 pounds as specified in § 238.203. Static end strength is critical in protecting passenger equipment from crushing in a head-on or rear-end collision, especially in the North American railroad operating environment that includes frequent highway-rail grade crossings and the mixed operation of freight and passenger trains. FRA is confident that all but a limited number of existing passenger cars in the United States have been built to this basic compressive strength requirement. Beginning in 1939, the AAR recommended that new passenger cars operated in trains of over 600,000 pounds empty weight have a minimum static end strength of 800,000 pounds, and since 1956, Federal Regulations (49 CFR. 229.141) have required that new MU locomotives operated in such trains must meet this standard. Railroads with existing

passenger cars that do not meet the minimum static end strength requirement may petition FRA for grandfathering approval to continue to use the equipment; see discussion under § 238.203.

FRA does, however, recognize that low-speed rail operations that are structured to totally preclude both operations over highway rail grade crossings and the sharing of trackage between light rail equipment and conventional equipment do not require the structural standards required for commingled operations. Accordingly, the final rule (in § 238.201) provides that passenger equipment is not subject to the structural requirements of the rule if it used exclusively on a rail line (A) with no public highway-rail grade crossings, (B) on which no freight operations occur at any time, (C) on which only passenger equipment of compatible design is utilized, and (D) on which trains operate at speeds no higher than 79 mph. FRA will discuss with the Working Group in Phase II of the rulemaking what structural standards are appropriate for such operations.

In the NPRM, FRA considered requiring that one or more of the other structural requirements for new passenger equipment, discussed above, be made applicable to existing equipment as soon as one of the following events occurs: the equipment is sold to another railroad; the equipment is rebuilt; the equipment reaches 40 years of age; or 10 years elapses after the effective date of the rule. FRA invited comments on: (1) What equipment would be affected by each of these structural requirements; (2) the feasibility and costs of retrofitting such equipment, with costs broken out for each of the different structural requirements, in the event such triggering events were adopted in the final rule; (3) whether these triggering events are reasonable, or whether some other fixed deadline should be established for making one or more of these structural requirements applicable to existing passenger equipment; and (4) the safety benefits that could accrue by making these requirements applicable to existing equipment. FRA did specifically note in the NPRM that older passenger equipment may not meet the collision post requirements in § 238.211(a) because of a change in collision post design following a collision between two Illinois Central Gulf Railroad commuter trains in Chicago, Illinois, on October 30, 1972.

In response, APTA commented that it opposed application of the rule's structural standards to existing

passenger equipment in light of the potential adverse economic impact on passenger railroads. AAPRCO, in its comments on the NPRM, believed the costs associated with rebuilding private cars to meet the new passenger equipment requirements would be extremely high with no significant benefit to the public. AAPRCO stated that Amtrak requires all cars, including private cars, that operate on their system be maintained to strict standards of inspection, including full 40-year truck teardowns with specified periodic scheduled truck roll-outs, annual inspections, and full COT&S. AAPRCO noted that nearly all private cars currently in operation are over 40 years old.

In the final rule, FRA has made the compressive strength requirement the only structural requirement applicable to existing passenger equipment. However, in general, if the need arises to apply one of the other structural requirements specified in the rule to existing passenger equipment, FRA will reconsider whether such requirements should be made applicable to existing equipment. In particular, FRA will ask its Working Group in Phase II of the rulemaking to consider applying the other structural requirements specified in the rule to existing passenger equipment when the equipment is "rebuilt" or otherwise improved such that the useful life of the equipment is materially extended. Further, FRA will not specifically limit the consideration of the Working Group in this regard to the rule's structural requirements, but will include in its consideration any of the other requirements for Tier I passenger equipment in this final rule.

Equipment of Special Construction

Comments from Talgo, discussed in general above and in more specific terms below, question the relevance or appropriateness of some of the proposed structural standards to a trainset built with articulated connections using a monocoque or space frame design. In consultations associated with the Working Group review, FRA sought information from the commenter regarding its trainset and has sought to identify requirements that might be appropriate for this configuration. However, in general, the analytical basis for alternative engineering values suggested by the commenter either was not evident or was determined not to be appropriate. Talgo did submit additional engineering information in October of 1998 but FRA could not appropriately analyze this data for purposes of the final rule without substantially delaying the rule's

issuance. FRA does recognize that special attention is needed to the specifics of this design, which is unique in current service in the United States, both to avoid inappropriate requirements and to ensure sound functioning of features that may warrant exceptions from other requirements.

In the final rule, § 238.201 has been amended to permit approval of equipment of special construction. (This alternative compliance approval process does not apply to the minimum static end strength requirements set forth in § 238.203.) The basis for decision would be similar to that discussed in the NPRM with respect to waivers (62 FR 49728, 49755), but the special approval mechanism would be employed as a more appropriate means of recognizing whether the equipment provides an equivalent level of safety with the standard of safety benchmarked in the particular provisions of the subpart.

No New Safety Appliance Requirements

FRA is not imposing new safety appliance requirements for passenger equipment subject to this subpart. The safety appliance requirements referenced in § 238.229 continue to apply to such passenger equipment and are noted in this rule for clarity. Similarly, the window glazing requirements in 49 CFR part 223 continue to apply by their own force.

Section 238.203 Static End Strength

This section contains the requirements for the overall compressive strength of all Tier I rail passenger equipment, except for equipment meeting the requirements of § 238.201. This section is based on the long-standing practice of constructing passenger cars to possess a minimum static end strength of 800,000 pounds on the line of draft without permanent deformation of the body structure. This practice has proven effective in the North American railroad operating environment that includes frequent highway-rail grade crossings, mixed operation of freight and passenger trains, and less than fully-capable signal and train control systems. This section should be read with the discussion relating to static end strength earlier in the preamble.

In general, paragraph (a) requires that on or after November 8, 1999 all passenger equipment (except as otherwise provided in § 238.201) shall resist a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure. As specified in paragraph (a)(2), unoccupied volumes of a passenger car or a locomotive may

have a lesser static end strength to allow a crash energy management design approach to be employed, if the car or locomotive resists a minimum static end load of 800,000 pounds applied on the line of draft at the ends of its occupied volume without permanent deformation of the body structure. FRA makes clear that, for purposes of paragraph (a)(2), the ability of a car or locomotive to resist a minimum static end load of 800,000 pounds applied on the line of draft at the ends of its occupied volume without permanent deformation of the body structure shall be determined on the basis of the individual car or locomotive's own strength and crash energy management design. Two or more units of passenger equipment may not be included in demonstrating the ability of the occupied volume of an individual passenger car or locomotive to resist a minimum static end load of 800,000 pounds as specified in paragraph (a)(2).

Paragraph (a)(2) is based on proposed § 238.203(b) in the NPRM, see 62 FR 49804. In the final rule, FRA has revised and incorporated that paragraph into paragraph (a). FRA has done so in part to make clear that a passenger car or a locomotive must first resist a minimum static end load of 800,000 pounds applied at the ends of the car or locomotive, unless the car or locomotive employs a crash energy management design in which case the load may then be resisted at the ends of the volume of the car or locomotive occupied by passengers or crewmembers.

FRA has included paragraph (a)(3) in the final rule in response to the comments on the NPRM that existing AEM-7 locomotives would not comply with the static end strength requirement proposed by FRA. As FRA understands, applying the 800,000-pound load at the buff stops of an AEM-7 locomotive apparently creates too large a moment on either the draft gear housing or on the buffer beam to side sill connection. Having analyzed the AEM-7 locomotive, FRA believes that the structure can support a 1,000,000-pound load applied at the center of the buffer beam, and provide an equivalent or greater level of safety than that proposed in the NPRM.

The requirements of paragraph (a)(3) are based on former AAR Standard 034-69, Section 6—Buffing, paragraph (f). In the final rule, FRA has doubled the load provided in the AAR Standard from 500,000 pounds to 1,000,000 pounds, to ensure safety. Further, FRA has tailored paragraph (a)(3) so that the alternative specified therein does not apply to any locomotive placed in service on or after July 12, 1999, as FRA wishes to limit

application of this alternative to existing locomotives. In addition, the alternative specified in paragraph (a)(3) may not be applied to a cab car or an MU locomotive. Use of the alternative for such a locomotive will not provide as high a level of safety as for a conventional locomotive.

As specified in paragraph (a)(4), the requirements of paragraph (a) do not apply to unoccupied passenger equipment operating at the rear of a passenger train. In the NPRM, FRA had proposed excepting from the requirements of paragraph (a) vehicles such as auto-carriers and RoadRailers operated at the rear of a passenger train and used solely to transport freight. To the extent such equipment could be excepted from the requirements of this paragraph, FRA determined that other unoccupied passenger equipment operating at the rear of a passenger train could also be excepted. In general, however, FRA would prefer that every vehicle in a passenger train have a minimum static end strength as specified in this section so that in the event of a train collision the cars in the train will crush or resist crushing with a certain degree of predictability and, thereby, further the ability of the train to remain upright and in line. As most collisions involving a passenger train occur at the train's forward end, the requirement for unoccupied passenger equipment to possess a minimum compressive strength is more significant for such equipment operated at the train's forward end and in front of the passenger car consist, than for such equipment operated at the rear. As proposed in the NPRM, private cars are also excepted from the requirements of paragraph (a). Nevertheless, FRA believes that, at a minimum, most private cars do comply with the compressive strength requirements that are specified in this paragraph for other passenger equipment.

In the final rule, FRA has included paragraph (b) to address the concern of railroads commenting on the NPRM that their existing passenger equipment may need to undergo potentially costly testing to determine whether the equipment complies with the static end strength requirements specified in this rule. Although FRA believes that only a limited number of existing passenger equipment on the nation's railroads does not comply with the static end strength requirement specified in paragraph (a)(1), FRA has included a presumption in the final rule to alleviate the burden on railroads to show that their existing equipment complies with the requirements of this paragraph. Paragraph (b) provides that any

passenger equipment placed in service before November 8, 1999 is presumed to comply with paragraph (a)(1) (and thus presumed to resist a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure), unless the railroad operating the equipment has knowledge, or FRA makes a showing, that such passenger equipment was not built to the requirements specified in paragraph (a)(1). FRA makes clear that passenger equipment built in accordance with AAR specifications for the construction of passenger equipment operating in trains of more than 600,000 pounds total empty weight is deemed to be built to the requirements specified in paragraph (a)(1) and, thereby, compliant in this regard. Originally adopted in 1939, Section 6, paragraph (a), of AAR Standard S-034-69, "Specification for the Construction of New Passenger Equipment Cars," provides in part, "The car structure shall resist a minimum static end load of 800,000 lbs. at the rear draft stops ahead of the bolster on the center line of draft, without developing any permanent deformation in any member of the car structure." FRA also makes clear that, in a case where the railroad does not know whether its passenger equipment was built to the requirements specified in paragraph (a)(1) (or, in essence, this AAR specification), the presumption that the equipment was built to the requirements specified in paragraph (a)(1) still applies. The presumption is not applicable only in those cases where the railroad knows, or FRA can make a showing, that the equipment was not built to the requirements specified in paragraph (a)(1).

In response to the NYDOT's comment as to the effect of applying the static end strength requirement to existing passenger equipment, and thereby to the turboliner equipment planned for use in New York State, FRA believes that the RTL trainsets undergoing rebuild comply with the end strength requirement specified in paragraph (a)(1). However, these RTL trainsets need to be contrasted with the RTG trainsets which the NYDOT has also expressed an interest in rebuilding for like use. FRA believes that these RTG trainsets do not meet the end strength requirement specified in paragraph (a)(1), as FRA understands they were built in accordance with UIC (International Union of Railways) structural standards (which provide for lesser structural strength). FRA does note that no RTG trainsets are currently in service in the United States and that

to rebuild the equipment would involve substantial cost while failing to meet the crashworthiness objectives of this rule. Information available to FRA indicates that the only useable remaining components of these trainsets are their shells. Further, FRA is not aware that any funding has been allocated to initiate the remanufacture of these trainsets, and any planned use of these trainsets should be considered speculative.

To prevent sudden, brittle-type failure of the passenger equipment body structure, paragraph (c) requires that the body structure be designed, to the maximum extent possible, to fail by buckling or crushing, or both, of structural members rather than by fracture of structural members or failure of structural connections.

In the final rule, FRA has added a paragraph (d) to provide a process for grandfathering approval of passenger equipment in use on a rail line or lines on November 8, 1999 that does not meet the minimum static end strength requirements. If the operator of the equipment files a petition with FRA seeking grandfathering approval to continue to use the equipment within this 180-day period after the rule is published, the equipment could continue in such usage while the petition is being processed, but such usage must stop May 8, 2000 unless the petition is approved. The section sets forth the requirements for petitions and service of the petition, and the process FRA will follow in soliciting comments on the petition and disposing of petitions.

FRA plans to "grandfather" equipment only for use in particular operating environments providing a sufficient showing is made that any incremental safety risk incurred in those environments is not of significant concern or that specific measures mitigating the risk to the traveling public and to railroad employees are utilized. Petitioners will need to demonstrate—through a quantitative risk assessment that incorporates design information, engineering analysis of the equipment's static end strength and of the likely performance of the equipment in derailment and collision scenarios, and risk mitigation measures to avoid the possibility of collisions or to limit the speed at which a collision might occur, or both, that will be employed in connection with the usage of the equipment on a specified rail line or lines—that use of the equipment, as utilized in the service environment for which recognition is sought, is in the public interest and is consistent with railroad safety. In this regard, FRA notes

that passenger equipment not possessing the minimum static end strength specified in this rule does not have the same capacity to absorb safely within its body structure the compressive forces that develop in a collision as equipment meeting the standard. The engineering analysis submitted by the petitioner should address how these forces will be dissipated in a manner that does not jeopardize occupant safety in collision scenarios.

Grandfathering approval of non-compliant equipment is limited to usage of the equipment on a particular rail line or lines. Before grandfathered equipment can be used on another rail line, a railroad must file and secure approval of a grandfathering petition for such usage.

Section 238.205 Anti-Climbing Mechanism

This section contains the vertical strength requirements for anti-climbing mechanisms on rail passenger equipment. The purpose of the anti-climbing mechanism is to prevent the override or telescoping of one passenger train unit into another in a derailment or collision. FRA is requiring that all passenger equipment placed in service for the first time on or after November 8, 1999 shall have an anti-climbing mechanism at each end capable of resisting an upward or downward vertical force of 100,000 pounds without permanent deformation. When coupled together in any combination to join two vehicles, AAR Type H and Type F tight-lock couplers satisfy this requirement. This requirement incorporates a long-standing industry practice into the final rule.

The rule further requires that the forward end of a locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, be equipped with an anti-climbing mechanism capable of resisting an upward or downward vertical force of 200,000 pounds without failure. This requirement applies to locomotives or power cars of permanently coupled trains, and includes cab cars and MU locomotives. Specifying a vertical load requirement for lead vehicles (locomotives) that is greater than that for coupled vehicles is needed to address the greater tendency for override in a collision between uncoupled vehicles. AAR Standard S-580, which addresses the crashworthiness of locomotives, has included this requirement for all freight locomotives built since August 1990. FRA believes this industry practice is sound, and this requirement received

endorsement by passenger railroad representatives. FRA recognizes that incorporating a separate anti-climbing arrangement in the leading structure of cab cars and MU locomotives presents a significant challenge. FRA will continue to work with the APTA PRESS Task Force to derive a suitable solution.

In its comments on the proposed rule, Talgo remarked that § 238.205(a), as drafted, seemed to consider that only couplers may properly function as anti-climbing mechanisms. Talgo recommended modifying this section to avoid this implication and ensure that anti-climbing mechanisms of varying design can be evaluated fairly. Talgo asserted that such a modification would ensure that articulated trainsets are not unfairly subject to a requirement that focuses only on conventionally coupled units. WDOT, in its comments on the NPRM, raised similar points, noting that articulated joints of semi-permanently coupled trainsets provide anti-climbing ability. As a result, FRA makes clear that the term anti-climbing mechanism is intended to be read broadly to encompass more than a conventional coupler, and that an articulated connection may serve as an anti-climbing mechanism for the purposes of this section provided it can withstand the vertical forces specified in this section.

In its comments on the NPRM, Talgo also believed that the rule should be restated to accommodate trains of different masses. Specifically, in determining the strength of the anti-climbing feature, Talgo recommended stating the operative variable as vertical acceleration, expressed in gs (units of acceleration of gravity), rather than load, expressed in pounds. Accordingly, Talgo recommended modifying this section so that the anti-climbing mechanism be capable of resisting a certain value of acceleration, instead of a vertical force of 100,000 pounds. Talgo supplemented its comments on this section following FRA's announcement that the minutes of the rulemaking's Working Group meetings had been added to the rulemaking's docket. See 63 FR 28496; May 26, 1998. As FRA had permitted comments for inclusion in the record as to whether the minutes accurately reflected statements made at the Working Group meetings, Talgo stated that the minutes do not mention that a representative of the Volpe Center acknowledged that this section should be modified to address lighter rail equipment. Talgo stated that, aside from the ends of its articulated trainsets which it noted are compliant with the 100,000 pound vertical force requirement, intermediate joints in the

trainsets need only be equipped with anti-climbing mechanisms of 47,000 pounds strength to provide the same level of safety as required by the rule. Talgo explained that, for purposes of calculating a vertical force requirement, one should focus on the static force needed to lift a car of specified weight from one end while supported by the truck on the other end. Talgo further explained that this value should be multiplied by a safety factor—equal to 2.2., as it derived from values in the proposed rule—in order to take into account the possibilities of misalignment and similar dynamics in the event of a collision. As a result, Talgo believed specifying a 47,000-pound strength requirement for anti-climbing mechanisms on its equipment would provide the same level of safety as specifying a 100,000-pound strength requirement for anti-climbing mechanisms on conventional cars.

FRA notes that during a train collision the relatively strong underframe of a rail vehicle may ride up above the underframe of an adjacent rail vehicle, and extensively crush the weaker superstructure of the overridden vehicle. The potential for override to occur is influenced by the dynamic motions of the cars, the relative heights of the vehicles' underframes, and the changing geometry of the vehicles' structures as they crush during the collision. These factors allow the development of a vertical component of the very high longitudinal forces occurring in a train during a collision. This vertical force component, in effect, squeezes one underframe up and over the underframe of another vehicle in the train. While all three factors play a role in the occurrence of override, results of actual collisions indicate that the changing geometry of the car structures as they crush—which, in effect, creates a ramp during the collision—can overwhelm the influence of the difference in sill heights. There are numerous examples of cars with relatively low underframe heights that have overridden cars with relatively high underframe heights.

FRA has not modified the final rule in response to Talgo's comment that the rule should require the anti-climbing mechanism to be capable of resisting a certain value of acceleration instead of a specified vertical force. First, Talgo has not indicated in its comments what that value of acceleration should be, and FRA believes that formulating a performance standard in pounds of force, instead, is appropriate. Second, Talgo's subsequent comments have focused on specifying a 47,000-pound vertical force as an alternative to the

100,000-pound vertical force that an anti-climbing mechanism must resist under this section. In response to this latter suggestion by Talgo, FRA notes that the longitudinal force acting on a vehicle in a train during a collision is, in large part, a function of the vehicle's own deceleration plus the force required to decelerate all the vehicles behind it. (The longitudinal force is also dependent on the force required to crush the vehicles in the train.) When a sufficient vertical component of this total force develops, override occurs. Because the longitudinal force required to decelerate the trailing vehicles can exceed the force required to decelerate the subject vehicle, it is not possible to relate the deceleration of a single vehicle to the tendency to override in the way that Talgo has explained in arriving at its proposed 47,000-pound strength value. The Volpe Center representative cited by Talgo sought to make this point clear at the December 15, 1997 Working Group meeting. This representative also tried to make clear that he did not agree that consideration should be given to lighter rail equipment in the way that Talgo proposed at the Working Group meeting and in its comments on the rule.

Even though it may be theoretically possible to develop a formula which relates the decelerations of all the cars in a train to the tendency to override, such a formula would have to take into account the specific cars in the train and the time-phasing of the decelerations of the cars during a collision, as well as the forces required to crush each of the cars. Development of such a formula is beyond FRA's resources in issuing initial passenger equipment safety standards as mandated by Congress. However, FRA will further examine this issue in evaluating equipment of special construction.

Section 238.207 Link Between Coupling Mechanism and Car Body

This section contains the vertical strength requirements for the structure that links the coupling mechanism to the car body on passenger equipment. The purpose of this requirement is to avoid a premature failure of the draft system so that the anti-climbing mechanism will have an opportunity to engage.

FRA is requiring that all passenger equipment placed in service for the first time on or after November 8, 1999 be provided with a coupler carrier or other coupler-to-car-body linking structure that is designed to resist a vertical downward thrust from the coupler shank of 100,000 pounds, without permanent deformation for any normal

horizontal position of the coupler or coupling mechanism.

In its comments on the NPRM, Talgo stated that this section should be modified to apply only in the case where the coupler between cars itself acts as the anti-climbing mechanism—not in cases where other anti-climbing designs such as articulated unions are utilized. As a result, Talgo recommended that the requirements of this section should apply only to the couplers at the far ends of an articulated trainset, and not to the interior articulated unions which do not employ couplers. Talgo believed that this approach has been proposed in the rule with respect to Tier II passenger equipment. Talgo further commented that the load requirement should be the same as provided in § 238.205.

FRA recognizes that in an articulated trainset, the articulated joint connecting the cars in the train serves as both the coupler carrier and as the anti-climbing mechanism. Such cars do not have a coupler shank, *per se*. For practical reasons, including administration of the rule, FRA proposed separate requirements for the strength of the anti-climbing mechanism in § 238.205 and for the strength of the link between the coupling mechanism and car body in § 238.207 because the vast majority of Tier I passenger equipment possesses a conventional draft system. However, FRA intended that for passenger equipment utilizing articulated connections that comply with the requirements of § 238.205(a), such articulated connections would also comply with the requirements of this section. In the final rule, FRA has made this explicit by adding a sentence to the rule text, and FRA has therefore adopted Talgo's comment in this regard. Talgo's comment with respect to specifying an appropriate load requirement for this section is consequently addressed in the discussion of § 238.205, above.

Section 238.209 Forward-Facing End Structure of Locomotives

This section contains the requirements for the covering or skin of the forward-facing end structure of each passenger locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. The purpose of these requirements is to protect the occupied volume of the locomotive cab. This area is especially vulnerable in a highway-rail grade crossing collision if a fuel tank that is part of or being transported by the highway vehicle ruptures, or bulk hazardous materials are released.

FRA is requiring that the skin covering the forward-facing end of each

passenger locomotive, including a cab car and an MU locomotive, be at a minimum equivalent to a 1/2-inch steel plate with a 25,000 pounds-per-square-inch yield strength. Material of a higher yield strength material may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained. The skin shall also be designed to inhibit the entry of fluids into the occupied area of the equipment, and be affixed to the collision posts or other main vertical structural members of the forward-facing end structure to add to the strength of the end structure.

AAR Standard S-580 has included these requirements for all locomotives built since August 1990. From observations of locomotives during collisions, FRA believes that this industry standard should be part of these safety standards. Passenger railroad representatives in the Working Group endorsed this improved safety requirement.

In its comments on the NPRM, APTA recommended that paragraph (c) be clarified so that the skin be designed to permit a train line door with a window in the forward-facing end structure of cab cars and MU locomotives. In fact, as proposed in the NPRM, the rule defined "skin" to mean the "outer covering on a fuel tank or the front of a locomotive, including a cab car and an MU locomotive, excluding the windows and forward-facing doors." See § 238.5; 62 FR 49795 (The skin may also be covered with another coating of a material such as fiberglass). APTA's recommendation is therefore consistent with FRA's proposal. For clarity, however, FRA has revised the final rule by removing the exclusion concerning windows and forward-facing doors from the definition of "skin" in § 238.5, and placing the exclusion instead directly in paragraph (d) of this section.

Section 238.211 Collision Posts

This section contains the structural strength requirements for collision posts. Collision posts provide protection against the crushing of occupied volumes of passenger equipment, including the telescoping of one vehicle into another, in the event of a collision or derailment.

Paragraph (a) requires that all passenger equipment placed in service for the first time on or after November 8, 1999 shall have either two full-height collision posts, each collision post having an ultimate longitudinal strength of not less than 300,000 pounds, or an equivalent end structure. The 300,000-pound strength requirement makes

mandatory the long-standing construction practice for collision posts in passenger equipment operating in the United States and has proven effective in the Nation's railroad operating environment. This requirement is similar to that contained in 49 CFR 229.141(a)(4), which applies to MU locomotives operated in trains having a total empty weight of 600,000 pounds or more, but also requires the collision posts to be full-height. As noted, FRA does not believe the 600,000-pound consist weight threshold is an appropriate distinction to retain for passenger equipment operating on the general system intermingled with equipment of more substantial strength, and, as a result, no such consist weight distinction is made in the final rule.

Full-height collision posts provide additional protection because they extend higher than posts attached only at the underframe. Little, if any, additional cost is imposed on builders by requiring full-height posts. Spacing the collision posts at approximately the one-third points laterally across the ends of the equipment will allow both posts to be engaged in many collision scenarios. An equivalent single end structure may be used in place of the two collision posts provided the structure can withstand the sum of the forces that each collision post is required to withstand. This allows for the design of monocoque, unitized or like structures. FRA notes, of course, that such a single end structure must also resist the loading requirements for corner posts as specified in § 238.213, as well as any other applicable end structure requirements as specified in this rule for Tier I passenger equipment.

Amtrak, in its comments on the NPRM, noted that its rail passenger operation is unique in the United States because it includes the use of unoccupied express and mail cars. Amtrak stated that collision posts applied to unoccupied head end cars (express cars) are unwarranted because the posts unnecessarily increase the tare weight of this equipment without any associated improvement in safety. FRA had originally proposed requiring that all passenger equipment comply with the requirements of paragraph (a), except for a vehicle of special design that operates at the rear of a passenger train and is used solely to transport freight, such as an auto-carrier or a RoadRailer. See 62 FR 49804. FRA sought this broader application of the collision post requirements in part because collision posts serve to repel adjacent passenger equipment in a train collision or derailment and, thereby, help prevent the uncontrolled crushing

of equipment which could tend to misalign the train consist. For occupant safety, it is optimal that a train remain in line and upright in the event of a collision or derailment, and gradually come to a stop after "plowing the ballast" along the railroad track.

Nonetheless, FRA has revised the final rule to except unoccupied passenger equipment from the requirements of this section—whether operated at the rear or forward end of a passenger train. However, as noted above in the discussion of § 238.203, unoccupied passenger equipment operated at the forward end of a passenger train must comply with the static end strength requirement to maintain the integrity of the train.

Paragraph (b) requires that each locomotive, including a cab car or MU locomotive, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, have two forward collision posts, located at approximately the one-third points laterally across the end of the locomotive, each post capable of withstanding a 500,000-pound longitudinal force without exceeding the ultimate strength of the joint. In addition, each post must be capable of withstanding a 200,000-pound longitudinal force exerted 30 inches above the joint of the post to the underframe, without exceeding its ultimate strength. AAR Standard S-580 has included this requirement for all locomotives built since August 1990. From observation of the improved performance of these locomotives during collisions, including collisions with motor vehicles at highway-rail grade crossings, FRA believes this industry practice should become part of this rule's safety standards.

As an alternative, an equivalent end structure may be used in place of the two forward collision posts described in paragraph (b), to allow for the design of monocoque, unitized or like structures. The single end structure shall withstand the sum of the forces that each collision post is required to withstand, in addition to the loading requirements for corner posts as specified in § 238.213 and any other applicable end structure requirements as specified in this rule for Tier I passenger equipment.

Paragraph (c) provides that for a consist of semi-permanently coupled, articulated units, the end structure requirements in paragraphs (a) and (b) of this section apply only to the ends of the semi-permanently coupled consist of articulated units, provided that the railroad submits to the FRA Associate Administrator for Safety under the procedures specified in § 238.21—and

FRA accepts as persuasive—a documented engineering analysis establishing that the articulated connection is capable of preventing disengagement and telescoping to the same extent as equipment satisfying the anti-climbing and collision post requirements contained in this subpart. In such case, the interior ends of the individual units in the consist need not be equipped with an end structure meeting the requirements of paragraphs (a) and (b). FRA notes that, in commenting on proposed § 238.211(c), both Talgo and WDOT had requested that FRA substitute the phrase "semi-permanently coupled" for "permanently joined" in describing the consist of units subject to the exception provided in paragraph (c). This recommendation has been adopted.

FRA has modified paragraph (c) from that proposed in the NPRM, see 62 FR 49804, by not providing an automatic exception from the collision post requirements for the interior ends of individual units in a consist of semi-permanently coupled, articulated units. Instead, a railroad must submit a documented engineering analysis supporting the capabilities of the articulated connection, as described above, and FRA must find that analysis persuasive. Articulated assemblies have a history of remaining in line during derailments and collisions and, if not designed to be uncoupled, only the outside ends of the entire assembly should be exposed to the risks of override. However, none of the relevant recent experience is on the North American continent, and the ability of articulated connections to remain intact during a collision with North American passenger equipment, freight rolling stock, or a fixed obstruction has not been demonstrated analytically. FRA noted the weakness in the proposed exception (§ 238.211(c) of the NPRM) while preparing the final rule. An approved, documented engineering analysis supporting the capabilities of the articulated connection is necessary to ensure the safety of passengers and crewmembers.

Section 238.213 Corner Posts

This section contains the requirements for corner posts on passenger cars, such as passenger coaches, cab cars and MU locomotives, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. FRA has clarified the requirements of this section, as explained below.

A corner post is the vertical structural member normally located at the intersection of the end of a rail vehicle

with a side of that vehicle. Paragraphs (a) and (b) specify the loads and orientation of the loads that a corner post in a passenger car must resist. The values specified in paragraphs (a) and (b) are the same as those proposed in the NPRM, see 62 FR 49804, though they have been stated in a different manner for clarity in the final rule.

This section allows flexibility so that corner posts may be located at positions other than at the extreme outside corners of a passenger car, as long as the corner posts are placed ahead of the occupied volume of the car. In this manner, corner posts may be positioned adjacent to the occupied volume of a passenger car to provide structural protection to the occupied volume. For instance, for passenger coaches equipped with end vestibules, the corner posts may be located in the side structure inboard of the vestibules' side door openings, provided that such posts are not placed inside the occupied volume, which includes any space for crew or passenger seating. FRA has fully defined "occupied volume" in § 238.5 to mean the volume of a rail vehicle or passenger train where passengers or crewmembers are normally located during service operation, such as the operating cab, and passenger seating and sleeping areas. The entire width of a vehicle's end compartment that contains a control stand is an occupied volume. Further, a vestibule is typically not considered occupied, except when it contains a control stand for use as a control cab.

FRA did not intend that the flexibility to place corner posts at locations other than at the extreme outside corners of passenger cars would permit such corner posts to be placed inside the occupied volume of the cars, and FRA recognizes that it should have made this point more explicit in the NPRM. See 62 FR 49766. (Of course, as a railroad is free to take safety measures beyond those required in this rule, a railroad may, therefore, operate a passenger car with corner posts inside the occupied volume of the car if another set of corner posts that do comply with the requirements of this section are placed ahead of the occupied volume.) In light of the vulnerabilities of cab cars and MU locomotives operating as the leading units in a passenger train, such passenger cars must be equipped with corner posts meeting the requirements of this section that are placed ahead of the occupied volume. Cab cars and MU locomotives will normally be occupied by a train crewmember in an end compartment, and thus must have corner posts placed near the extreme ends of the vehicles. As stated in its

comments on the NPRM, the BLE does not wish the cab control compartment to be the designated section of a passenger car to crush in a collision, and FRA agrees with the BLE that the cab must be protected.

Bombardier, in its comments on the 1997 NPRM, suggested that proposed section 238.213(a) be modified so that the corner posts must resist the loads specified in this section at the point of attachment to the underframe and at the point of attachment to the roof structure, as those loads are applied individually. FRA had proposed that the corner post be able to resist these loads as applied simultaneously, not as applied individually. FRA has carried forward its proposal into the final rule, and has not adopted Bombardier's comment. Requiring the corner post to resist the specified loads as applied simultaneously at the points of attachment to the underframe and at the roof structure is a stricter requirement. In addition, the requirement is likely more representative of the conditions present in an actual collision where the corner post may be impacted at both points simultaneously, as in the case of a sideswipe with a passing rail car.

In their comments on the NPRM, Talgo and WDOT stated that the rule should provide an exception for articulated trainsets similar to that proposed for collision posts in § 238.211(c) of the NPRM. Accordingly, these commenters believed that corner posts should be required only at the far ends of an assembly of semi-permanently coupled, articulated passenger equipment—not at each end of each intermediate, semi-permanently coupled vehicle. FRA has not adopted these comments in the final rule. First, as discussed above, FRA has modified § 238.211 on collision posts so that there is no automatic exception from the collision post requirements for intermediate vehicles in an assembly of semi-permanently coupled, articulated passenger equipment. Further, corner posts, by their very definition and location, protect against hazards in a way that collision posts (positioned closer to the center of the end of a vehicle) cannot. There are many different scenarios in which a passenger car may be struck at its corner, such as in a corner-to-corner collision with another rail vehicle, or a raking collision with an object fouling the right-of-way. As noted in the NPRM, eight passengers were killed following incursion of a freight car into the side of two Amtrak coaches beginning at the corner of each car, near Lugoff, South Carolina, on July 31, 1991. Although there may be less chance of striking the corner of a semi-

permanently coupled, articulated passenger car under certain circumstances, the possibility of doing so does exist. FRA, therefore, cannot grant an exclusion from the corner post requirements to such equipment operated as an intermediate unit in an assembly of semi-permanently coupled, articulated passenger cars.

In additional comments on this section, the BLE stated that the proposed corner post strength requirements for Tier I passenger equipment do not adequately address its safety concerns. The BLE noted that past cornering collisions may have resulted in fewer deaths and injuries had improved corner post structures been in place, and that Tier I passenger equipment may operate up to 125 mph in corridors with a significant number of highway-rail intersections. The BLE recommended that FRA apply the corner post requirements proposed for Tier II power cars in § 238.409 to all new and upgraded Tier I passenger equipment.

As FRA explained in the NPRM, the structural parameters for corner post strength represent the common practice for passenger cars built for North American service. They are being adopted as an interim measure to prevent the introduction of equipment not meeting such minimum requirements. FRA recognizes that current design practice has proven inadequate to protect the occupied volume in several recent side-swipe collisions involving passenger trains with cab cars leading. Crash modeling suggests that it is not feasible to modify current equipment designs to protect against collisions of the magnitude that occurred at Secaucus, New Jersey, and Silver Spring, Maryland, in February of 1996. Nevertheless, stronger corner posts are necessary to address collisions involving lower closing speeds. FRA is assisting the APTA PRESS Task Force in preparing a standard for corner post arrangements on cab cars and MU locomotives. Adoption of a suitable standard will be an immediate priority upon publication of the final rule.

Section 238.215 Rollover Strength

This section contains the structural requirements intended to prevent significant deformation of the normally occupied spaces of a passenger car in the event it rolls onto its side or roof. This section essentially requires the vehicle structure to be able to support twice the dead weight of the vehicle while the vehicle is resting on its side or roof. Analysis has shown that current passenger car design practice meets this requirement. This requirement has

proven effective in preventing massive structural deformation of cars that have rolled during collisions or derailments. For this reason, FRA believes this requirement should be incorporated into these safety standards.

In the NPRM, FRA invited comment whether this requirement should also apply to locomotives. Representatives from RPI had advised that locomotives do not roll over frequently enough to justify such requirements for conventional locomotives.

The BRC commented that this requirement should apply to locomotives to protect the locomotive's crew from the crush and deformation of the locomotive's occupied volume. While recognizing that locomotives may not roll over frequently, the BRC observed that the additional strength will protect the locomotive's crew if other equipment does land on top of the locomotive. The BRC believed that the occupied volume of the locomotive must be protected to increase the chances of survivability for crewmembers. FRA notes that a rollover strength requirement for all locomotives—freight and passenger—is being examined in the RSAC Locomotive Crashworthiness Working Group. FRA believes that the Locomotive Crashworthiness Working Group is the most appropriate forum in which to address a rollover strength requirement for locomotives overall.

In its comments on the NPRM, Talgo stated that paragraph (a) should include the clarification that local deformations are acceptable when the car rests on its side, just as paragraph (b) specifies that some deformation is permitted to the roof when the car is resting thereon. In paragraph (b), FRA has specified that deformation to the roof sheathing and framing is allowed to the extent necessary for the vehicle to be supported directly on the top chords of the side frames and end frames. This type of deformation does not impinge on the volume normally occupied by passengers. However, side wall deformations pose a safety risk to passengers since seats and other interior fittings are typically attached to the side wall, and passenger limbs are at risk of entrapment or crushing. Therefore, FRA has modified this section in response to Talgo's comment only to permit local yielding of the outer skin of a passenger car provided the resulting deformations in no way intrude upon the occupied volume of the car.

As Bombardier suggested in its comments on the NPRM, FRA has also made a minor clarification to this section by substituting the words "in the structural members of the" in place

of the word "for" in the phrase which originally read in the NPRM, "the allowable stress for occupied volumes. . . ." See 62 FR 49804–49805.

Section 238.217 Side Structure

This section contains car body side structure requirements. These requirements are intended to prevent the side panels of a passenger car from flexing excessively while in operation, and help to resist penetration of the passenger car's side structure by an outside object. These provisions essentially codify, with minor modifications, sections 16 and 17 of AAR Standard S-034-69, Specification for the Construction of New Passenger Equipment Cars.

This section was originally entitled "Side impact strength" in the NPRM. FRA has changed the section title because the requirements in this section principally refer to the stiffness of a car's side panel, rather than the panel's strength. That is, these provisions principally focus on preventing the side panel from flexing excessively under service loads. The greatest service loads acting on the sidewalls of a passenger car probably result from the aerodynamic loads of a train entering or exiting a tunnel, and from two trains passing each other at speed. Residually, these requirements will provide some protection in the event the passenger car's side panel is struck by an outside object.

FRA believes that a side structural strength requirement is necessary because approximately 13% of the grade crossing accidents involving a passenger train result from a highway vehicle striking the side of the passenger train. Further, passenger trains may be struck in the side by other trains, individual rail cars that roll out of sidings, or freight being transported on trains sharing common rights-of-way. In addition, during a derailment or train-to-train collision, trains frequently buckle, exposing the sides of cars to potential impacts during the collision.

In its comments on this section in the NPRM, Bombardier noted that the proposed requirement was based on AAR Standard 034, Section 20, and it believed that to be consistent with the AAR Standard and to take advantage of the higher strength steels currently used in carbody construction, the rule should specify in paragraph (a) that, "Where minimum section moduli or thickness are specified, they shall be adjusted in proportion to the ratio of the yield strength of the material used, to that of mild open-hearth steel." FRA agrees that this comment is applicable to cars whose structural members are made of

steel of higher strength than mild open-hearth steel. Accordingly, FRA has expressly provided that the minimum section moduli or thickness specified in paragraph (a) may be adjusted in proportion to the ratio of the yield strength of the material used to that of mild open-hearth steel only for a car whose structural members are made of a higher strength steel.

Talgo, in its comments on this section in the NPRM, believed that the requirement should be rewritten to specify the units used for each of the concepts discussed. For clarity, FRA states that the dimensional units in this paragraph are in inches, and the units for the section moduli are "in inches³" (inches cubed) in paragraphs (a)(1) and (2).

In its comments on the NPRM, WDOT stated that it appeared FRA has continued to refuse to provide it with detailed information on the risks and true need for side impact standards. WDOT stated that it had previously asked FRA for documentation to support FRA's assertion that, as originally stated in the ANPRM, "[d]esigns of some passenger equipment have floor levels low to the rail, creating the tendency for a heavy highway vehicle striking the side of the train to climb into the occupied passenger volume rather than being driven under the underframe of the passenger rail car" (61 FR 30692). Without such detailed evidence, WDOT recommended that proposed § 238.217 be deferred until the second phase of the rulemaking.

The Volpe Center has analyzed a highway vehicle side impact into a single-level Amfleet car. The results of that analysis indicate that the Amfleet car will derail and push sideways before significant crushing of the car can occur. It is expected that rail cars having similar structures—side sill, body bolster, and center sill—at a similar height would behave in the same way in such a collision. This includes most passenger cars operating in the United States. However, other cars, such as Amtrak's bi-level cars and WDOT's single-level rail cars, have floor structures that are structurally different and positioned closer to the rail. Preliminary analysis indicates that significant crushing may occur if a highway vehicle collides into the side of one of these cars.

As a general principle in specifying a side impact strength requirement for a passenger car, the objective is to ensure that the side of the passenger car is strong enough so that the car derails and is pushed sideways—rather than collapses—when struck in the side by

another rail vehicle or a highway vehicle. FRA believes that current practice may not be adequate to meet this goal, and that cars with low floors are particularly vulnerable to penetration when struck in the side. A more meaningful side structure requirement than contained in this section is necessary to address this concern. Such a requirement will include specifying minimum shear values at the car's floor as well as at some point above the floor to protect the car's occupants. This will be a priority in the second phase of the rulemaking. The requirement in this final rule is, therefore, an interim measure. As FRA believes that this section does not address in particular the vulnerability of low-floor passenger cars to a side impact by a heavy highway vehicle, FRA has, in effect, deferred consideration of a requirement to do so.

FRA notes that WDOT also commented as to the likelihood that a highway vehicle will strike the side of a passenger train. WDOT disagreed with FRA's analysis and conclusions on this issue as stated in the NPRM. See 62 FR 49730-1. WDOT stated that FRA had omitted mentioning that two-thirds of all the highway vehicle side impact collisions into a passenger train involved the highway vehicle striking the side of the locomotive. From this, WDOT estimated that one-half of one percent (0.5%) of all grade crossing accidents over the 10-year period shown in the NPRM may have involved a "heavy" highway vehicle striking the side of a passenger car.

FRA has gathered more recent data since publication of the NPRM on highway vehicle side impact collisions into passenger trains. Between January 1, 1990, and December 31, 1997, 1,572 collisions occurring at public highway-rail public grade crossings between passenger trains and highway vehicles were reported to FRA. In 202 of these instances (12.8%) highway vehicles struck the side of a passenger train. In other words, a highway vehicle struck the side of a passenger train an average of approximately 25 times each year in this period. Further, in this period 137 collisions involved the highway vehicle striking the first unit of the passenger train, and 65 collisions involved the highway vehicle striking a unit behind the first unit in the train. As a result, WDOT is correct insofar as approximately two-thirds of such collisions involved the highway vehicle striking the first unit in the passenger train, which ostensibly was a locomotive but could also have been a passenger car (cab control car or MU locomotive).

Over the same 8-year period, 31 of the 202 occurrences in which a highway vehicle struck a passenger train involved a "heavy" highway vehicle. For purposes of this analysis, FRA considered heavy highway vehicles to consist of all those vehicles identified as a "Truck-Trailer" (3) and one-half of those vehicles identified as "Truck" (55), as specified according to Form FRA F6180-57—Rail-Highway Grade Crossing Accident/Incident Report. In this period, then, a heavy highway vehicle struck the side of a passenger train an average of 4 times each year—and of these occurrences a heavy highway vehicle struck other than the lead unit in the train an average of 1 to 2 times each year.

In its comments on the NPRM, the WDOT noted that FRA had not provided a record of any injuries or deaths occurring from highway vehicle collisions into passenger trains. FRA states here that in the 8-year period from 1990 through 1997, highway vehicle collisions into passenger trains resulted in 7 total injuries reported to FRA—3 injuries to railroad employees, and 4 injuries to passengers—and no reported fatalities. FRA notes that reliance on this passenger injury data in the abstract is not appropriate when considering the risks associated with operating a particular rail passenger vehicle. For example, it is possible that a highway vehicle collision into the side of an Amfleet rail car that does not injure any passengers would instead cause injuries under the same circumstances in a collision involving a rail car with a different floor structure positioned closer to the rail. As noted above, most of the passenger cars in the United States possess floor structures similar to the Amfleet rail car, positioned at a similar height above the rail. FRA maintains that the potential for a highway vehicle to strike the side of a passenger train is real, as shown by the record of the frequency of highway vehicles striking the sides of passenger trains. FRA therefore advises railroads to consider the risks and consequences of such a collision, with particular attention to the different units of passenger equipment in their operations.

As noted above, the side strength of a passenger car is also highly pertinent to its crashworthiness in a side or raking collision with other railroad rolling stock. Examples could include a freight car rolling out of a siding or industrial spur into the side of a passenger train, or a locomotive moving in a terminal area passing through a switch and into the side of a passenger train. Recognizing these concerns, the Tier II

provision on side strength does attempt to address the identified need. This provision was derived from discussions with Amtrak concerning development of specifications for its high-speed trainsets for the Northeast Corridor.

Section 238.219 Truck-to-car-body attachment

This section contains the truck-to-car-body attachment strength requirement for passenger equipment. The attachment is required to resist without failure a 2g vertical force on the mass of the truck and a force of 250,000 pounds in any horizontal direction on the truck.

The intent of the requirement for the attachment to resist without failure a minimum vertical force equivalent to 2g acting on the mass of the truck is to prevent the truck from separating from the car body if it is raised or rolls over. In effect, the attachment must resist, without failure, a force equal to twice the weight of the truck and all the components attached to the truck. Many types of keepers are used to keep trucks attached to car bodies. FRA believes that the majority of them are capable of meeting this requirement. The intent of the requirement for the attachment to resist without failure a minimum force of 250,000 pounds acting in any horizontal direction on the truck is to address the forces that act upon the truck during a derailment that would tend to shear the truck from the car body. The parameter selected represents the current design practice that has proven effective in preventing horizontal shear of trucks from car bodies.

If the truck separates from the car body in a collision or derailment it may become a hazardous projectile that will intrude upon the occupied volumes of the equipment involved in the collision or derailment. Further, if the truck separates from the car body it will not be able to serve, in effect, as an anti-climbing device in a collision or derailment. 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.

In its comments on the NPRM, Talgo recommended that the regulation be modified so that the strength of the attachment against horizontal force is also measured in gs. Specifically, Talgo suggested that the vertical force resistance limit of 2g could be employed rather than a fixed load measure that, according to Talgo, did not take into account individual truck mass. Talgo believed that this modification would not undermine the intent of the rule, which it noted as allowing the truck to

act as an anti-climbing device during a collision, citing the NPRM at 62 FR 49767.

In addressing Talgo's comments, FRA would like to make clear that the fundamental reason for requiring the truck-to-car-body attachment to resist without failure a minimum force of 250,000 pounds acting in any horizontal direction on the truck is to prevent the truck from shearing off (separating from) the car body. (FRA believed this implicit in the preamble discussion of the NPRM, and is making it clear here to remove any doubt.) Whether the truck separates from the car body if the car rolls over, or whether the truck separates from the car body from being sheared off, the truck may become a hazardous projectile in either case. FRA did state in the NPRM, "If the truck remains attached to the car body, the truck is less likely to be struck by [or strike] other units of the train." 62 FR 49767. Having the truck remain attached to the car body also allows the truck to serve, in effect, as an anti-climbing device to prevent one vehicle from overriding another in a collision. In this regard, FRA stated in the NPRM, "*With the truck attached to the car body*, the truck of an overriding vehicle is likely to be caught by the underframe of the overridden vehicle, thus arresting the override." *Id.* (Emphasis added.) However, insofar as FRA's statement in the NPRM that the "Requirement for the [truck-to-car-body] attachment to resist a horizontal force is intended to allow the truck to act as an anti-climbing device during a collision" has been understood to represent the only intent of the horizontal loading resistance requirement, FRA makes clear here that such an understanding of the requirement's intent is too narrow.

FRA believes it appropriate to specify that a passenger rail vehicle's truck-to-car-body attachment must resist without failure a minimum force of 250,000 pounds acting in any horizontal direction on the truck. This force may be possessed by one rail vehicle (Vehicle A) as it collides with the truck of another rail vehicle (Vehicle B) in a collision. Vehicle A is able to possess this force independent of the mass of Vehicle B's truck—or, for that matter, the mass of Vehicle B itself.

Nonetheless, Vehicle B's truck-to-car-body attachment must resist this force so that its truck does not separate from its body. In this regard, FRA believes it inappropriate to restate the horizontal force requirement in this section so that it is dependent on the mass of an individual rail vehicle's truck. FRA does note that it has related the mass of the truck to the vertical force that the truck-

to-car-body attachment must resist: In this case, the mass of the truck necessarily determines how strong the truck-to-car-body attachment must be to prevent the truck from separating from the vehicle, as the weight of the truck essentially acts to "pull" the truck away from the rail vehicle.

Talgo, in further commenting on the requirements of this section, recommended that the rule should except articulated equipment utilizing a single-axle truck positioned between two car bodies. Talgo stated that in the event a compressive force is generated by a collision, the truck attached to articulated equipment would become embedded between the two car bodies. In this case, it believed the truck is not intended to serve as an anti-climbing device, and that the train's articulated joints would instead provide protection against climbing. WDOT also raised this point in its comments on the NPRM, and recommended that FRA work with Talgo to develop an appropriate alternative to the proposed rule for non-conventional equipment.

As noted, having the truck remain attached to the car body in a collision or derailment helps to prevent one vehicle from overriding another vehicle as the truck of the vehicle attempting the override is caught on the underframe of the other vehicle. Further, the opportunity of having the truck of one vehicle caught on the underframe of another vehicle in such a scenario should be less likely to occur in a collision involving single-axle articulated passenger rail cars than in the case of non-articulated, conventional rail equipment. Yet, as FRA has made clear, the requirements of this section are principally intended to prevent a truck from separating from a rail passenger vehicle. Trucks can and have separated from articulated rail equipment in a collision; and truck separation poses a direct threat to the safety of a passenger train's occupants, especially when the cars in which those passengers ride are structurally vulnerable to penetration. As a result, the requirements of this section must apply to all passenger rail equipment—whether articulated or not.

Section 238.221 Glazing

This section contains additional requirements concerning the safety glazing of passenger equipment subject to the requirements of 49 CFR part 223. Existing safety glazing requirements for windows have largely proven effective in passenger service at speeds up to 125 mph. However, part 223 does not address the performance of the frame which attaches the window glazing to

the car body. Paragraph (b)(1) requires each exterior window on a locomotive cab or a passenger car to remain in place when subjected to the forces the glazing itself is required to resist in part 223 of this chapter. In this way, the window glazing must be secured in place so that it can both resist spalling when struck by a projectile, for example, and also resist being knocked out of the window frame. Paragraph (b)(2) requires each exterior window on a locomotive cab or a passenger car to remain in place when subjected to the forces due to air pressure differences caused when two trains pass at the minimum separation for two adjacent tracks, while traveling in opposite directions, each train traveling at the maximum authorized speed. This requirement is also intended to prevent the window from being forced from the window frame, potentially injuring passengers and crewmembers. FRA believes that most existing passenger equipment subject to part 223 meets these requirements.

FRA did not receive any specific comments on this section. However, for clarity, FRA has restated in § 238.221(b) and (c) in the NPRM, see 62 FR 49085, as § 238.221(b) in this final rule. The focus in paragraph (b) in the final rule is clearly on the ability of each exterior window to remain in place, however the window may be secured, and not have the window become a potential projectile itself.

Section 238.223 Fuel tanks

This section contains the structural requirements for external and internal fuel tanks on passenger locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. External fuel tanks must comply with the performance requirements for locomotive fuel tanks contained in Appendix D to this part, or an industry standard providing at least an equivalent level of safety if approved by FRA's Associate Administrator for Safety under § 238.21. The requirements in Appendix D are based on AAR Recommended Practice-506, Performance Requirements for Diesel Electric Locomotive Fuel tanks, as adopted on July 1, 1995. In the NPRM, FRA proposed incorporating the requirements of AAR RP-506 directly into the rule. See 62 FR 49805. In preparing the final rule, however, FRA determined that restating the requirements of RP-506 in Appendix D would facilitate FRA's administration of the external fuel tank performance requirement. RP-506 itself is not specifically written as a regulatory

document, and one of its provisions on fueling does not appear to be a safety requirement. However, FRA does not intend to make any substantive change from the requirements of RP-506, except as noted in detail in the discussion of Appendix D.

FRA has included a definition of external fuel tank in the final rule to mean a fuel containment volume that extends outside the car body structure of the locomotive. An external fuel tank is distinguished from an internal fuel tank, which is defined in the rule as a fuel containment volume that does not extend outside the car body structure of the locomotive. As a result, a fuel tank that is built into the car body structure but is exposed in any way to the outside is considered an external fuel tank under the rule.

FRA has changed the title of paragraph (b) in the NPRM from *Integral fuel tanks* to *Internal fuel tanks*, reflecting the clarification in the definitions. This change is consistent with FRA's intent that, for purposes of the rule, locomotive fuel tanks must comply with one of two standards, depending upon the exposure of the fuel tank outside the car body structure. FRA has dispensed with the term "integral" fuel tank—i.e., a fuel tank that is essentially integrated with a structural member of the locomotive not designed as a fuel container—because, depending on its placement, an integral fuel tank either may or may not be exposed outside the locomotive car body structure.

In commenting on the NPRM, Bombardier noted that the requirements proposed in this section have not been applied by the industry to diesel multiple-unit locomotives (DMUs). Bombardier believed that the need and feasibility of applying these standards to DMUs must be evaluated specially because DMUs have much smaller enclosed and protected fuel tanks than those found on conventional North American locomotives. Accordingly, Bombardier recommended that FRA defer applying the requirements of this section to DMUs, until specific requirements for DMUs are developed.

Having considered Bombardier's comment, FRA does not recommend separately addressing requirements for DMU locomotives at this time. FRA has not been provided the operational or performance information necessary for an in-depth evaluation of DMU fuel tanks, and only a limited number of DMUs presently operate within the U.S. FRA will further consider formulating separate requirements for DMU fuel tanks in Phase II of the rulemaking, as

operational and performance information is gained.

Section 238.225 Electrical System

FRA did not receive any specific comments on this section, and it is adopted as proposed. This section contains the requirements for the design of electrical systems on passenger equipment. In developing the proposed rule, the Working Group advised that no single, well-recognized electrical code or set of standards applied directly to the design of railroad passenger equipment. As a result, the Working Group recommended broad performance requirements which reflect common electrical safety practice and are widely recognized as good electrical design practice. FRA had offered for comment more detailed electrical system design requirements in the ANPRM, but as advocated by the Working Group the NPRM's approach was more performance-oriented and provided wide latitude in equipment design. FRA believes that this approach helps to ensure good electrical design practice without imposing unnecessary costs on the industry.

The electrical system requirements include provisions for:

- 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;
- Design of resistor grids that dissipate energy produced by dynamic braking with sufficient electrical isolation and ventilation to minimize the risk of fires; and
- Electromagnetic compatibility within the intended operating environment to prevent electromagnetic interference with safety-critical equipment systems and to prevent interference of the rolling stock with other systems along the rail right-of-way.

Electrical standards currently under development by an APTA PRESS Task Force will help give effect to these requirements and supplement them as appropriate.

Section 238.227 Suspension System

This section contains the requirements for suspension system performance of all Tier I passenger equipment. In the ANPRM, FRA presented for comment a large set of detailed suspension system performance requirements. The Working Group advised that such an extensive set of requirements was not needed for Tier I

passenger equipment, and the NPRM reflected this advice.

Overall, FRA is requiring that all passenger equipment shall exhibit freedom from hunting oscillations at all speeds. Further, FRA is requiring particular suspension system safety requirements for passenger equipment operating at speeds above 110 mph but not exceeding 125 mph, near the transition speed range from Tier I to Tier II requirements. Although FRA believes that for speeds not exceeding 110 mph existing equipment has not demonstrated serious suspension system stability problems, most of this same equipment is only operated at speeds that do not exceed 110 mph. Accordingly, when new or existing passenger equipment is intended for operation above 110 mph, this equipment must demonstrate stable operation during pre-revenue service qualification tests at all speeds up to 5 mph in excess of its maximum intended operating speed under worst-case conditions—including component wear—as determined by the operating railroad. The Working Group advised FRA that a single definition of worst-case conditions could not be applied generally to all railroads; and, as a result, the definition of worst-case conditions shall be determined by each railroad based upon its particular operating environment.

FRA has revised paragraph (a) based on a comment from Talgo by defining hunting oscillations in the rule text directly, and removing the definition of *hunting oscillations* from § 238.5. Further, FRA has clarified the intent of paragraph (a) that passenger equipment shall exhibit freedom from hunting oscillations at all "operating" speeds, by inserting the word "operating" as recommended by Bombardier in its comments on the rule. FRA has made a similar clarification in paragraph (b).

AAPRCO, in its comments on the NPRM, stated that "hunting" is a dynamic resonance phenomenon in which factors as diverse as car body characteristics, truck characteristics, suspension conditions, wheel tread contours and multiple rail alignment, profile, and lubrication conditions all interact to produce a condition in which the truck oscillates back and forth rapidly as the train moves down the track. AAPRCO recognizes that hunting may be dangerous because high forces can be generated between the wheels and the rails. However, according to AAPRCO, because complex interactions of many factors lead to hunting, there is no straightforward way for a car owner or railroad carrier to determine ahead of time whether hunting will occur

without extensive, dynamic testing at operating speed and often on the particular track in question. AAPRCO believed that all cars which exhibit hunting when in service should be fixed at the first opportunity. Yet, AAPRCO recommended deleting from the rule the requirement that passenger equipment exhibit freedom from hunting oscillations at all speeds for lack of a practical, predictive method to determine whether an individual car meets this requirement.

FRA agrees with AAPRCO's comments to the extent that the onset of truck hunting cannot always be predicted. However, railroads should not use equipment that they know has a hunting problem; and FRA is retaining the proposed requirement in the final rule. FRA has added AAPRCO's suggestion that if hunting oscillations do occur, a railroad shall take immediate action (such as a reduction in speed and subsequent attention to wheel contours) to prevent derailment. FRA does note that private rail cars are typically heavy rail cars and, therefore, less likely to hunt than lighter rail cars.

FRA has added paragraph (c) to this section to make clear that the requirements of 49 C.F.R. part 213 concerning vehicle/track interaction apply by their own force to passenger equipment, notwithstanding any provision of this section. The requirements of 49 C.F.R. § 213.345 are more detailed than those that are contained in this section, and apply as specified in that section to the qualification of the vehicle/track system for track Classes 6 through 9 for passenger equipment operating above 90 mph (and freight equipment operating above 80 mph).

Section 239.229 Safety appliances

This section references current safety appliance requirements contained in 49 U.S.C. chapter 203 and 49 CFR part 231. These existing requirements continue to apply independently to all Tier I passenger equipment, and FRA is referencing them here for clarity.

Section 238.231 Brake system

This section contains general brake system performance requirements that apply on or after September 9, 1999 to Tier I passenger equipment except as otherwise provided. Paragraph (a) contains a requirement that the primary braking system be capable of stopping the train with a service application of the brakes from its maximum authorized operating speed within the signal spacing existing on the track. FRA believes that this requirement is the most 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 operation in the United States.

Paragraph (b) requires that passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002 be designed not to require an inspector to place himself or herself on, under, or between components of the equipment to observe brake actuation or release. The requirement allows railroads the flexibility of using a reliable indicator in place of requiring direct observation of the brake application or piston travel, because the current designs of many passenger car brake systems make direct observation extremely difficult without the inspector placing himself or herself underneath the equipment. Brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years. FRA recognizes the concerns raised by certain labor representatives regarding the use of piston travel indicators, and although such indicators do not provide 100 percent certainty that the brakes are effective, FRA believes that they have proven themselves effective enough to be preferable to requiring an inspector to assume a dangerous position.

Paragraph (c) requires that an emergency brake application feature be available at any time and that it produce an irretrievable stop. This section merely codifies current industry practice and ensures that passenger equipment will continue to be designed with an emergency brake application feature. This provision recognizes the reality that most passenger brake equipment currently provides a deceleration rate with a full service application that is close to the emergency brake rate. The current design requirement contained in 49 CFR Part 232, Appendix B, requiring the emergency application feature increase a train's deceleration rate by 15 percent, would require the lowering of full service brake rates on passenger equipment, thereby compromising safety and lowering train speeds. Consequently, FRA will not require a specific deceleration rate that must be obtained through an emergency brake application.

Paragraph (d) requires that the train brake system respond as intended to brake control signals and that the brake control system be designed so that a loss of control signal causes a redundant control to take over or cause the brakes to apply. These provisions are fundamental requirements necessary for

effective brake system performance, and a codification of current industry practice. FRA intends the requirement to apply to all types of brake control signals, including pneumatic, electric, and radio signals.

Paragraph (e) prohibits the introduction of alcohol or other chemicals into the brake line. During periods of extreme cold weather, railroad employees at times resort to adding alcohol or other freezing point depressants to the brake line in an attempt to prevent accumulated moisture in the line from freezing. Virtually every railroad has a policy against this practice because alcohol and other chemicals attack the o-rings and gaskets that seal the brake system, causing them to age or fail prematurely. This practice can lead to dangerous air leaks and it increases maintenance costs.

Paragraph (f) requires that the brake system be 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 the 1994 NPRM on power brakes, FRA 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 allow for the development of new materials that can withstand higher temperatures. Based on these comments and concerns, FRA proposed in the 1997 NPRM and is retaining a more flexible performance requirement 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 to the safety concerns, FRA believes that this requirement will lead to longer wheel life, and thus should provide maintenance savings to the railroads.

Paragraph (g) requires that brake discs be designed and operated so that the disc surface temperature does not exceed manufacturer recommendations. In the 1994 NPRM, FRA proposed a disc surface temperature limit. See 59 FR 47729. As noted above, several brake manufacturers and railroads objected to this approach, claiming that the temperature limit was too conservative and did not allow for the development

of new materials that can withstand higher temperatures. Based on these comments and concerns, FRA proposed in the 1997 NPRM and is retaining a more flexible requirement rather than a single disc surface temperature limit. FRA believes this requirement will lead to longer disc life, and thus will produce maintenance savings to railroads.

Paragraph (h) contains the requirements related to hand brakes and parking brakes on passenger equipment. A hand or parking brake is an important safety feature that prevents the rolling or runaway of parked equipment. In the 1997 NPRM, FRA proposed an all encompassing requirement that all locomotives, except those ordered and placed in service before certain dates, and all other passenger equipment be provided with a hand or parking brake that could be set and released manually and could hold the equipment on the maximum grade anticipated by the operating railroad. Based on the concerns of labor representatives, FRA recognizes that this proposed provision is somewhat at odds with the hand brake provisions currently contained in 49 CFR part 231, particularly the requirements that the hand brake be able to be operated while the equipment is in motion and that the hand brake operate in harmony with the brake system. As it is FRA's intent to remain consistent with the existing safety appliance requirements for Tier I passenger equipment, FRA has slightly modified the provisions requiring hand or parking brakes on passenger equipment.

FRA is retaining the requirement for equipping locomotives, except for MU locomotives, with either a hand brake or a parking brake that can be set and released manually and can hold the equipment on the maximum grade anticipated by the operating railroad. As there are currently no requirements for equipping locomotives with hand brakes, FRA will permit the use of a parking brake or hand brake which meets the above specifications on these vehicles. However, for all other passenger equipment and for MU locomotives, FRA is requiring that they be equipped with a hand brake or parking brake which meets the requirements contained in 49 CFR part 231 regarding hand brakes on passenger cars. Although part 231 does not currently require hand brakes on MU locomotives, FRA is requiring that the hand brake required to be installed on these locomotives under this paragraph comply with the requirements contained in part 231 for other passenger equipment. As these

locomotives generally transport members of the general public, similar to passenger coaches, the necessity to apply the hand brake while the car is in motion becomes critical for passenger safety. Therefore, FRA believes that MU locomotives should be equipped with a hand brake which meets the design requirements contained in part 231 regarding passenger cars.

This paragraph contains the requirement that the hand brake or parking brake hold the loaded unit on the maximum grade anticipated by the operating railroad. FRA makes clear that the term "loaded unit" refers to the maximum weight and capacity that the unit will carry during its operation. Thus, such things as maximum fuel capacity, maximum passenger capacity, maximum train crew capacity, and the maximum weight of any lading that the locomotive or other unit will carry should be considered in determining the holding ability of any hand or parking brake utilized.

Paragraph (i) contains the requirement that passenger cars be equipped with a means for the emergency brake to be applied that is clearly identified and accessible to passengers. This is a longstanding industry practice and an important safety feature because crucial time may be lost requiring passengers sensing danger to find a member of the train crew to stop the train.

Paragraph (j) contains provisions to ensure that the dynamic brake does not become a safety-critical device. Railroads have consistently held that dynamic brakes are not safety devices because the friction brake alone is capable of safely stopping a train if the dynamic brake is not available. The provisions in this paragraph include requiring that the blending of the friction and dynamic brakes be automatic, that the friction brakes alone be able to stop the train in the allowable stopping distance, and that a failure of the dynamic brake does not cause thermal damage to wheels or discs due to the greater friction braking load. FRA believes that without these requirements the dynamic brake would most likely become a safety-critical item and railroads would not be permitted to dispatch trains unless the dynamic brake were fully operational.

Although FRA recognizes the concerns of labor representatives that dynamic brakes are safety critical and should be required to work at all times, FRA believes that in the context of blended braking labor's concerns are somewhat misplaced and are adequately addressed by various provisions contained in this final rule. In the blended brake context, unlike freight

operation, there is not an independent dynamic brake: The dynamic brake and the pneumatic brake systems are automatically blended without separate action being taken by the locomotive engineer. Thus, the undue reliance on the dynamic brake is not a major concern when blended braking systems are utilized. In addition, the provisions contained in this paragraph ensure that blended brake systems are designed so that failure of the dynamic portion of the blended braking system does not impact the safe operation and stopping of the train. Furthermore, as part of the exterior calendar day mechanical inspection railroads are required to verify that all secondary braking systems are in operating mode and do not have any known defects. See § 238.303(e)(15). Consequently, the railroad must verify that the dynamic brakes are in operating mode and do not contain any known defects and take prescribed action whenever the dynamic brakes are found to be inoperative prior to releasing a locomotive from an exterior calendar day mechanical inspection.

Paragraph (k) requires that either computer modeling or dynamometer tests be performed to confirm that new brake designs not result in thermal damage to wheels or discs. Further, if the operating parameters of the new braking system change significantly, a new simulation must be performed. This requirement provides a means to ensure that the requirements in paragraphs (f) and (g) are being complied with by new brake designs.

Paragraph (l) requires that all locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, be equipped with effective air coolers or air dryers if equipped with air compressors. The coolers or dryers must be capable of providing air to the main reservoir with a dew point suppression at least 10 degrees F. below ambient temperature. FRA and most members in the industry agree that moisture is a major cause of brake line contamination. Consequently, reducing moisture leads to longer component life and better brake system performance. Currently, virtually all passenger railroads purchase only locomotives equipped with air dryers or coolers. Therefore, FRA is merely requiring the continuation of what it believes is good industry practice. Although labor representatives contend that a dew point suppression of 10 degrees below ambient temperature is insufficient to prevent condensation in the train line, these commenters provided no support for that contention other than the

assertion that prior specifications called for a 35 degree dew point suppression. Based on available information, FRA believes that a 10 degree dew point suppression is adequate. Without further study into the issue, FRA is reluctant to impose a more burdensome standard than that which was proposed. This issue may be further considered in the second phase of this passenger equipment rulemaking process.

Paragraph (m) requires that when a train is operated in either direct or graduated release, the railroad shall ensure that all cars in the train consist are set-up in the same operating mode. This provision was added based upon the concerns of several labor commenters regarding trains operated by Amtrak which contain a mixture of traditional passenger equipment and freight-like equipment. Most passenger trains are operated in what is known as a graduated release mode, whereby brake cylinder pressure may be reduced in steps proportional to increments of brake pipe pressure build-up; however, when passenger trains operated by Amtrak contain certain freight-like equipment the train is operated in a direct release mode, whereby brake cylinder pressure is completely exhausted as a result of an increase in brake pipe pressure. As these two different types of operating modes are now being utilized on passenger trains, FRA agrees it is necessary to require a railroad to ensure that all the cars in the train are set-up in the same operating mode in order to prevent potential train handling problems.

Section 238.233 Interior Fittings and Surfaces

This section contains the requirements concerning interior fittings and surfaces that apply, as specified in this section, to passenger cars and locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002.

FRA and NTSB investigations of passenger train accidents have revealed that luggage, seats, and other interior objects breaking or coming loose is a frequent cause of injury to passengers and crewmembers. During a collision, the greatest decelerations and thus the greatest forces to cause potential failure of interior fitting attachment points are experienced in the longitudinal direction, *i.e.*, in the direction parallel to the normal direction of train travel. Current practice is to design seats and other interior fittings to 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 the injuries caused by broken seats and other loose fixtures, FRA believes that the current design practice is inadequate.

Paragraph (a)(1) requires that each seat in a passenger car remain firmly attached to the car body when subjected to individually applied accelerations of 4g in the lateral direction and 4g in the upward vertical direction acting on the deadweight of the seat or seats, if held in tandem. Based on a comment from Simula in response to the NPRM, FRA has clarified this requirement from that proposed in the NPRM by specifying that the vertical loading is in the "upward" direction. Paragraph (a)(2) specifies that a seat attachment shall have an ultimate strength capable of resisting the longitudinal inertial force of 8g acting on the mass of the seat plus the load associated with the impact into the seat back of an unrestrained 95th-percentile adult male initially seated behind the seat back, when the floor decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds (msec). 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. As used in this section, a 95th-percentile adult male has been defined in § 238.5 of the final rule based on the same characteristics for such a vehicle occupant specified by the National Highway Traffic Safety Administration (NHTSA) in its motor vehicle safety standards at 49 CFR § 571.208, S7.1.4. At the January 1998 Working Group meeting, the NTSB had recommended use of the NHTSA specifications for purposes of the rule's occupant protection requirements.

The requirement contained in paragraph (a)(2) represents a modification from FRA's original proposal that the seat attachment 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. See 62 FR 49806. The impact speed at which the occupant strikes the seatback ahead of him during a collision depends on the distance from the occupant to the seatback and the deceleration of the car (the crash pulse) during the collision. In drafting the rule, FRA has assumed a seat pitch, or distance from the occupant to the seatback ahead of him, consistent with the longest seat pitch currently used in intercity passenger train service. As a result, the final rule specifies the crash pulse and its duration, and need not specify the secondary impact velocity. This change is intended to clarify the

rule by relating it more directly to how the rule is applied and allow for different seat pitches. Seat pitches are expected to reflect actual use of the seats and be less than that assumed by FRA. Consequently, secondary impact speeds of occupants striking the seatbacks ahead of them are expected to be 25 mph or less—a marginally less severe test condition than that provided for in the NPRM.

The revision to this paragraph is based in part on comments from Simula that the rule require the seat to resist a dynamic crash pulse, which it believed to be triangular with a 250 millisecond duration and an 8g peak, plus the impact of representative unrestrained occupants seated in a second row directly behind the test article. Simula noted that including a dynamic crash pulse in the longitudinal direction (parallel to the normal direction of train travel) provides a simulation of a typical train-to-train collision in which the seat would be involved. According to Simula, a dynamic crash pulse is more representative of the crash environment than the shock pulse defined by a peak acceleration only. Simula explained that the crash pulse is typically specified for seat testing in the aircraft and automotive industries. Specifying a crash pulse in essence specifies the operation of the test equipment. FRA notes that the seat testing proposed in the NPRM (and required in the final rule) is similar to such testing performed in the aircraft and automotive industries, and FRA expects that the actual testing of rail equipment will utilize the same test equipment as used in these other industries. FRA has, therefore, specified a crash pulse in this paragraph.

FRA notes that at the Working Group meeting in December 1997, APTA explained that it could not agree then to change any of the proposed seat testing requirements, and that it was conducting research in these matters. However, FRA does not believe the inclusion of a crash pulse in this paragraph and elimination of the 25 mph impact speed to significantly alter the required strength of the seats from that proposed in the NPRM. In fact, the original proposal was potentially more rigorous than that required under this final rule.

Simula additionally commented that each crash test dummy used to impact the seat back in testing the strength of the seat must be instrumented, and that the injury data gathered from each dummy then meet specified injury criteria. Simula explained that, like automotive and transport aircraft testing, rail seat design requirements

should include the use of crash test dummies to measure specified loads and accelerations for meeting specified injury criteria. FRA believes that Simula's comment is significant and wholly appropriate for consideration in the second phase of rulemaking on passenger equipment safety standards. In this regard, FRA notes that Simula references in its comments on proposed § 238.435 (the Tier II counterpart to this section) the use of a future APTA standard to specify occupant injury criteria and other parameters. Accordingly, resolution of this issue in the second phase of the rulemaking should benefit from APTA's efforts in this area.

In its comments on the NPRM, Simula also suggested modifying the rule so that the requirements of paragraph (a) apply to each seat assembly and specify that each seat assembly not separate from its mountings or have any of its parts detach. FRA believes that Simula's suggested modification restates the requirements of this section, in effect, and FRA does not find it necessary to change the explicit wording of the rule text. Simula further recommended specifying in the rule that in sled testing the strength of the seat attachment to the car, the attachment that is tested must be representative of the actual structure and attachment. FRA agrees with Simula that testing a seat and its attachment of a design or structure not representative of that actually used in a passenger car would necessarily fail to demonstrate that the actual seat and its attachment comply with the requirements of the rule. FRA has made this explicit in paragraph (g). Of course, any tests of passenger equipment or components of a design or structure not representative of an actual rail vehicle or actual components subject to the requirements of this part would necessarily fail to demonstrate that such actual vehicle or components comply with the requirements of this part—whether or not FRA has made this explicit in the rule text.

Paragraph (b) requires 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 car body, these racks shall 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. This mass shall be specified by each railroad. In commenting on the NPRM, the BRC did

not believe that a railroad should be allowed to specify the mass of the luggage stowed for purposes of this requirement. However, each railroad is in the best position to determine the mass of the luggage that can be stowed in the stowage area.

Paragraph (c) requires that all other interior fittings in a passenger car be attached to the car body with sufficient strength to withstand individually applied accelerations of 8g longitudinally, 4g vertically, and 4g laterally acting on the mass of the fitting. FRA believes the attachment strength requirements for seats, overhead storage racks, and other interior fittings will help reduce the number of injuries to occupants in passenger cars.

Passenger car occupants may also be injured by protruding objects, especially if the occupants fall or are thrown against such objects during a train collision or derailment. As a result, FRA is requiring in paragraph (d) that, to the extent possible, all interior fittings in a passenger car, except seats, shall be recessed or flush-mounted. Fittings that are recessed or flush-mounted do not protrude above interior surfaces and thereby would help to minimize occupant injuries.

Paragraph (e) is a general, common sense prohibition against sharp edges and corners in a locomotive cab and a passenger car. Just as FRA is concerned about protruding objects, these surfaces could also injure passenger train occupants. If sharp edges and corners cannot be avoided in the equipment design, they should be padded to mitigate the consequences of occupant impacts.

The requirements of paragraph (f) apply to each floor-mounted seat in a locomotive cab as well as to any seat provided for an employee regularly assigned to occupy the cab. FRA is requiring the seat attachment to have an ultimate strength capable of resisting the loads due to individually applied accelerations of 8g longitudinally, 4g vertically, and 4g laterally acting on the combined mass of the seat and its occupant. When turned backwards during a collision, seats with head rests that are designed to this requirement can effectively restrain crewmembers and minimize or prevent injuries.

In the NPRM, FRA had proposed that the requirements of this section apply to each floor-mounted seat provided exclusively for a crewmember assigned to occupy the cab of a locomotive. See 62 FR 49806. Simula, in its comments on the NPRM, recommended that the requirements of this section not be limited to floor-mounted seats and

instead suggested substituting the words "car-mounted seat." Simula expressed concern that railroads may use wall-mounted seats for crewmembers that do not comply with these requirements. Yet, as noted below in the discussion of § 238.445(g) (this provision's Tier II counterpart), Bombardier observed that an additional seat—commonly a flip-up or a shelf-type seat—is in many cases provided in the cab for a train crewmember who is not normally in the cab. Bombardier believed these seats should not be subjected to the same requirements as for the train operators' seats.

FRA has revised paragraph (f) so that the requirements of this provision apply to floor-mounted seats and each seat provided for a crewmember regularly assigned to the locomotive cab. FRA recognizes that flip-down and other auxiliary seats are provided in locomotive cabs for the temporary use of employees not regularly assigned to the cab, such as a supervisor of locomotive engineers conducting an operational monitoring test of the engineer. These seats do not need to meet the requirements of this section.

In further commenting on this paragraph, Simula recommended specifying that the seat resist a triangular crash pulse of a 250 msec duration having an 8g peak. However, FRA believes that the static 8g load requirement proposed in the NPRM is a rational option, and has retained it in the final rule. As train operators' seats are not likely to be hit from behind, they are not likely to experience the impact forces that passenger seats experience. Adopting Simula's comment would result in a more expensive test without a corresponding increase in safety.

Simula additionally commented that, in conducting a test of the seat, the attachment of the seat to the sled fixture must be representative of the actual structure and attachment. FRA has adopted this comment, as noted above, in paragraph (g). Testing a seat and its attachment of a design or structure not representative of that actually used in a locomotive cab would necessarily fail to demonstrate that the actual seat and its attachment comply with the requirements of the rule.

Section 238.235 Doors

This section contains the requirements for exterior doors on passenger cars. These doors are the primary means of egress from a passenger train.

Paragraph (a) requires that by December 31, 1999, each powered, exterior side door in a vestibule that is partitioned from the passenger

compartment of a passenger car shall have a manual override device that is: capable of releasing the door to permit it to be opened without power from inside the car; located adjacent to the door which it controls; and designed and maintained so that a person may readily access and operate the override device from inside the car without requiring the use of a tool or other implement. Passenger cars subject to this requirement that are not already equipped with such manual override devices must be retrofitted accordingly. FRA notes that a vestibule is not partitioned from the passenger compartment of a passenger car solely by the presence of any windscreen which extends no more than one-quarter of the width across the car from the wall to which it is attached.

The requirements in paragraph (a) originally arose from the NTSB's emergency safety recommendations (R-96-7) as part of its investigation of the passenger train collision in Silver Spring, Maryland, on February 16, 1996. In the NPRM, FRA fully set out these emergency safety recommendations and FRA's response. See 62 FR 49734-5. As announced following its full investigation of the Silver Spring, Maryland passenger train collision, and stated here in particular among its final recommendations, the NTSB recommended that FRA:

Require all passenger cars to have easily accessible interior emergency quick-release mechanisms adjacent to exterior passageway doors and take appropriate emergency action to ensure corrective action until these measures are incorporated into minimum passenger car safety standards.

(R-97-14) (See NTSB/RAR-97/02)

FRA received a number of comments as to the date by which passenger cars must be equipped with manual overrides to open exterior, side doors as specified in this section. In its comments on the NPRM, Septa asked that the date be set three years after the effective date of the final rule, citing funding reasons. Metra commented that the date be set four to six years from the effective date of the final rule. FRA notes that this comment may have been based on the assumption that the rule requires manual override devices to be installed on the exterior of existing passenger cars, which this section does not. The UTU commented that the proposal in the NPRM afforded railroads more than enough time to comply with the requirement, considering their advance notice of this issue. Finally, in its comments on the NPRM, the NTSB stated that a two-year period to accomplish the equipping of passenger

cars with the manual override feature is too long.

Having considered the comments submitted, FRA has decided to require that compliance with this section be effected by December 31, 1999. FRA understands that a majority of the passenger cars are already in compliance with the rule as proposed. FRA recognizes that some entities may not be able to accomplish the total retrofit within the required time, to the extent their budget and acquisition process can only commence once the rule becomes final. However, these are self-imposed constraints that should not arrest progress in the industry as a whole. Any entity faced with such constraints should seek a waiver.

Paragraph (b) also provides that each powered, exterior side door have a manual override feature the same as that required in paragraph (a) for existing equipment, except that the manual override must also be capable of opening the door from outside the car. This requirement is intended to provide quick access to a passenger car by emergency response personnel, and represents the consensus recommendation of the Working Group. Paragraph (b) applies to each such door on a passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. Paragraph (b)'s requirements for a minimum number and dimension of side doors on a passenger car is discussed earlier in the preamble.

Paragraph (c) permits a railroad to protect a manual override device with a cover or screen to safeguard such devices from casual or inadvertent use. The rule requires that such cover and screens be capable of being removed by passengers, however.

Paragraph (d) is reserved for door marking and operating instruction requirements. These requirements are addressed in the final rule on passenger train emergency preparedness (49 CFR part 239), specifically § 239.107. See 63 FR 24630; May 4, 1998.

Section 238.237 Automated Monitoring

This section requires on or after November 8, 1999 an operational alerter or a deadman control in the controlling locomotive of each passenger train operating in other than cab signal, automatic train control, or automatic train stop territory. This section further requires that such locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, must be equipped with a working alerter. As a result, the

use of a deadman control alone on these new locomotives would be prohibited.

An alerter will initiate a penalty brake application if it does not receive the proper response from the engineer. Likewise, a deadman control will initiate a penalty brake application if the engineer fails to maintain proper contact with the device. The Working Group discussed establishing specific setting requirements for alerters or deadman controls based on maximum train speed and the capabilities of the signal system. This discussion led to the conclusion that settings should be left to the discretion of individual railroads as long as they document the basis for the settings that they select. If the device fails en route, the rule requires a second person qualified on the signal system and brake application procedures to be stationed in the cab or the engineer must be in constant radio communication with a second crewmember until the train reaches the next terminal. This is intended to allow the train to complete its trip with the device's function of keeping the operator alert taken over by another member of the crew.

Alerters are safety devices intended to verify that the engineer remains capable and vigilant to accomplish the tasks that he or she must perform. Equipping passenger locomotives with an alerter is current industry practice. These devices have proven themselves in service, and the requirement will not impose an additional cost on the industry.

In the final rule, FRA has clarified the procedures a railroad must follow if the alerter or deadman control fails en route. In addition to the requirements of paragraph (d)(1), under paragraph (d)(2)(i) a tag shall be prominently displayed in the locomotive cab to indicate that the alerter or deadman control is defective, until such device is repaired. Further, under paragraph (d)(2)(ii), when the train reaches its next terminal or the locomotive undergoes its next calendar day inspection, whichever occurs first, the alerter or deadman control shall be repaired or the locomotive shall be removed as the controlling locomotive in the train.

Subpart D—Inspection, Testing, and Maintenance Requirements of Tier I Passenger Equipment

Section 238.301 Scope

This subpart contains the requirements regarding the inspection, testing, and maintenance of all types of passenger equipment operating at speeds of 125 mph or less. This subpart is intended to address both MU locomotives and push-pull equipment.

This subpart includes the requirements for the inspection, testing, and maintenance of Tier I passenger equipment brake systems as well as the other mechanical and electrical safety components of Tier I passenger equipment.

Section 238.303 Exterior Calendar Day Mechanical Inspection of Passenger Equipment

This section contains the requirements for performing exterior calendar day mechanical inspections on passenger equipment and is patterned after a combination of the current calendar day inspection required for locomotives under the Railroad Locomotive Safety Standards and the pre-departure inspection for freight cars under the Railroad Freight Car Safety Standards. See 49 CFR 229.21 and 215.13, respectively. FRA intends for the exterior calendar day mechanical inspection to generally apply to all passenger cars and all unpowered vehicles used in passenger trains (which includes, e.g., not only coaches, MU locomotives, and cab cars but also any other rail rolling equipment used in a passenger train). However, paragraph (a) has been slightly modified to clarify that an inspection of secondary braking systems must be conducted on all passenger equipment, which includes all locomotives. A mechanical safety inspection of freight cars has been a longstanding Federal safety requirement, and FRA believes that the lack of a similar requirement for passenger equipment creates a serious void in the current Federal railroad safety standards.

As noted in the general preamble discussion, FRA has made minor changes and clarifications to the exterior calendar day mechanical inspection that was proposed in the 1997 NPRM. In paragraph (d) of this final rule, FRA is explicitly stating that the exterior mechanical inspection is to be performed to the extent possible without uncoupling the trainset and without placing the equipment over a pit or on an elevated track. This explicit statement has been added in response to APTA's concerns regarding what would constitute proper performance of these inspections. It was never FRA's intent to require this inspection to be conducted in such a manner. FRA intended the inspection to be very similar to the freight car safety inspection currently required pursuant to part 215.

FRA also recognizes that certain items contained in the proposed exterior mechanical inspection could not have been easily inspected without proper shop facilities. Therefore, FRA has

moved some of the exterior mechanical inspection requirements related to couplers and trucks to the periodic mechanical inspection requirements as these periodic inspections will likely be performed at locations with facilities available that are more conducive to inspecting the specific components. The specific items which have been moved to the periodic mechanical inspection requirements include: all trucks are equipped with a device or securing arrangement to prevent the truck and car body from separating in case of derailment; all center castings on trucks are not cracked or broken; the distance between the guard arm and the knuckle nose is not more than $5\frac{1}{8}$ inches on standard type couplers (MCB contour 1904) or more than $5\frac{5}{16}$ inches on D&E couplers; the free slack in the coupler or drawbar not absorbed by friction devices or draft gears is not more than $\frac{1}{2}$ inch; and the draft gear is not broken. The changes made in this final rule were discussed with the Working Group at the December 15-16, 1997 meeting.

Paragraph (a) requires that each passenger car and each unpowered vehicle used in a passenger train receive an exterior mechanical safety inspection at least once each calendar day that the equipment is placed in service except under the circumstances described in paragraph (f). As noted above, this paragraph also recognizes that the requirement contained in paragraph (e)(15) that all secondary braking systems on all passenger equipment are in operating mode and do not have any known defects. FRA has amended this requirement from that proposed in the 1997 NPRM, which proposed to require that all secondary braking systems be working (62 FR 49808), in order to acknowledge that it is impossible to ascertain whether some secondary braking systems, such as dynamic brakes, are working unless the equipment is in use. Thus, FRA has modified the language of the requirement to ensure that all secondary braking systems are capable of working when released from the exterior mechanical inspection. Paragraph (a) and paragraph (e)(15) have also been modified to accurately reflect FRA's intent to ensure that all secondary braking systems are inspected. The requirements for an exterior calendar day mechanical inspection are generally applicable only to passenger cars and other unpowered vehicles used in a passenger train. Thus, except for MU locomotives and cab cars, other locomotives would not fall within the requirements of this section. However, many locomotives contain secondary

braking systems such as dynamic brakes. Thus, in order to effectuate FRA's intent that these secondary braking systems be inspected, paragraph (e)(15) has been modified to clarify that it is applicable to all passenger equipment, which includes all locomotives. Consequently, FRA intends for the secondary braking systems on all locomotives to be inspected and that it be known that those systems are in operating mode and do not contain any known defects.

Paragraph (b) is also a new provision being added to this final rule in order to address the inspections of vehicles that are added to a passenger train while en route. FRA is modifying the Class I brake test and exterior calendar day mechanical inspection requirements to ensure the proper operation of all cars added to a train while en route. In paragraph (b) FRA is requiring the performance of an exterior mechanical inspection on each car added to a passenger train at the time it is added to the train unless documentation is provided to the train crew that an exterior mechanical inspection was performed on the car within the previous calendar day. FRA is adding this requirement in order to address the concerns raised by various labor representatives that no provisions were provided in the 1997 NPRM to address circumstances when cars are added to an en route train. FRA believes that the added provision will ensure the integrity of the mechanical components on every car added to an existing train and should not be a burden for railroads since cars are generally added to passenger trains at major terminals with the facilities and personnel available for conducting such inspections. Furthermore, the inspection requirements contained in this paragraph are very similar to what is currently required when a freight car is added to a train while en route. See 49 CFR § 215.13.

Paragraph (c) requires that exterior calendar day mechanical inspections be performed by a qualified maintenance person. FRA believes the combination of a daily Class I brake test and a mechanical safety inspection performed by highly qualified personnel is a key to safer passenger railroad operations. Such a practice will most likely detect and correct equipment problems before they become the source of an accident or incident resulting in personal injuries or damage to property. As noted in previous discussions, FRA does not intend to provide any special provisions for weekend operations with regard to conducting calendar day mechanical inspections by QMPs as suggested in the

comments submitted by some APTA representatives. The rationale for requiring daily mechanical attention by highly qualified inspectors, a proposition generally accepted by Working Group members, appears to apply equally to weekend periods. In fact, based on FRA's experience, equipment used on weekends is generally used more rigorously than equipment used during weekday operations.

At present, only one commuter operation (Metra) has raised significant concerns regarding weekend operations. Although there is no specific data suggesting that existing weekend operations on Metra have created a safety hazard, FRA has found it virtually impossible to draft and justify provisions providing limited flexibility for Metra that do not create potential loopholes that could be abused by other passenger train operations that have not had the apparent safety success of Metra. Moreover, based on FRA's independent investigation of Metra's operation, it is believed that the impact of this final rule on Metra's weekend operations will be significantly less than that indicated in APTA's written comments and originally perceived by Metra. FRA believes that most of the personnel needed by Metra to conduct its weekend operations in accordance with this final rule are available to Metra or its contractors and that minor adjustments could be made to its weekend operations that might avoid significant new expense. As the concerns regarding weekend operations appear to involve just one commuter operation and because the precise impact on that operation is not known or available at this time, FRA believes that the waiver process would be the best method for handling the concerns raised by that operator. This would afford FRA an opportunity to provide any relief that may be warranted based on the specific needs and the safety history of the individual railroad without opening the door to potential abuses by other railroads that are not similarly situated.

Paragraph (e) identifies the components that are required to be inspected as part of the exterior daily mechanical safety inspection and provides measurable inspection criteria for the components. The railroad is required to ascertain that each passenger car, and each unpowered vehicle used in a passenger train conforms with the conditions enumerated in paragraph (e) and that all passenger equipment conforms with the requirement contained in paragraph (e)(15). Deviation from any listed condition

makes the passenger car or unpowered vehicle defective if it is in service. The Working Group members generally agreed that the components contained in this section represent valid safety-related components that should be frequently inspected by railroads. However, members of the Working Group had widely differing opinions regarding the criteria to be used to inspect these components. FRA selected and has retained inspection criteria based on the locomotive calendar day inspection and the freight car safety pre-departure inspection required by 49 CFR parts 229 and 215, respectively. FRA believes that, at a minimum, passenger cars should receive an inspection which is at least equivalent to that received by locomotives and freight cars.

As discussed in the 1997 NPRM, FRA intends for the daily mechanical inspection to serve as the time when the railroad repairs defects that occur en route. Thus, this section generally requires that safety components not in compliance with this part be repaired before the equipment is permitted to remain in or return to passenger service. (See § 238.9 for a discussion of the prohibitions against using passenger equipment containing defects; and §§ 238.15 and 238.17 for a discussion of movement of defective equipment for purposes of repair or sale). The purpose of the defect reporting and tracking system required in § 238.19 is to have the mechanical forces make all necessary safety repairs to the equipment before it is cleared for another day of operation. In other words, FRA generally intends for the flexibility to operate defective equipment in passenger service to end at the calendar day mechanical inspection.

In paragraph (e)(15), FRA has modified the requirements regarding secondary braking systems to clarify that secondary braking systems must be in operating mode and contain no known defective conditions. FRA has also included provisions to address the handling of defective dynamic brakes in order to specifically establish restrictions on the movement of equipment containing this type of defective secondary brake and to recognize the concerns raised by several commenters regarding the importance that these secondary brakes have in the operation of passenger equipment. FRA agrees that in many circumstances it is desirable to have operative dynamic brakes in order to prevent thermal stress to the wheels, which has the potential of occurring if certain passenger trains are operated for extended periods

without dynamic brakes and compensating train control practices are not used. In developing the requirements for handling defective dynamic brakes, FRA has generally incorporated the current best practices of the industry.

This paragraph draws a distinction between dynamic brakes on MU locomotives and dynamic brakes on conventional locomotives, treating each slightly differently due to the safety implications involved in each type of operation. FRA intends to require that MU locomotives equipped with dynamic brakes found not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes be handled in the same manner as a running gear defect pursuant to § 238.17. Thus, MU locomotives found with defective dynamic brakes at the exterior calendar day mechanical inspection must have the dynamic brakes repaired prior to continuing in passenger service. FRA further intends that MU locomotives which experience a dynamic brake defect while en route be handled the same as a running gear defect pursuant to § 238.17. Thus, the locomotive would have to be inspected by a QMP and be properly tagged at the location it is found to be defective.

The requirements related to conventional locomotives found with dynamic brakes not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes are somewhat less stringent than the movement requirements placed on MU locomotives. In these cases, the locomotive may remain in passenger service provided that the unit is properly tagged, each locomotive engineer taking charge of the train is informed as to the status of the locomotive, and the locomotive's dynamic brakes are repaired within three calendar days of being found defective.

FRA has treated MU and conventional locomotives slightly differently for several reasons. Past history has shown that failure to have operative dynamic brakes in MU operations increases the potential of causing thermal stress to the wheels of the vehicles to a much greater extent than inoperative dynamic brakes in conventional locomotive operations. MU locomotive operations generally tend to have a greater number of station stops, requiring the use of the brakes, than operations where conventional locomotives are utilized and, thus, the potential for thermal stress to the wheels is increased. Furthermore, operations utilizing conventional

locomotives tend to operate for extended distances across the country and, thus, are further from locations where repairs to the dynamic brakes can be properly repaired. Therefore, these operations may need extra time to get a defective locomotive to a particular location for repair. Furthermore, FRA believes that the tagging and notification requirements imposed on conventional locomotives reduce the potential of an engineer's undue reliance on a secondary brake system which is not available. Finally, the handling requirements contained in this paragraph are consistent with the current practices within the industry and should have a minimal impact on passenger operations.

Paragraph (f) contains a narrow exception which allows long-distance intercity passenger trains that miss a scheduled exterior calendar day mechanical inspection due to a delay en route to continue in passenger service to the location where the inspection was scheduled to be performed. At that point, a calendar day mechanical inspection must be performed prior to returning the equipment to service of any kind. This flexibility applies only to the mechanical safety inspections of coaches. FRA does not intend to relieve the railroad of the responsibility to perform a locomotive calendar day inspection as required by 49 CFR part 229.

Paragraph (g) contains certain minimal recordkeeping requirements related to the performance of the exterior calendar day mechanical inspection provisions. FRA believes that proper and accurate recordkeeping is the cornerstone of any inspection process and is essential to ensuring the performance and quality of the required inspections. Without such records the inspection requirements would be difficult to enforce. Although recordkeeping was discussed in the Working Group and FRA believes it to be an integral part of any inspection requirement, FRA inadvertently omitted any such requirements in the NPRM specifically related to mechanical inspections. This omission was brought to FRA's attention through verbal and written comments provided by various interested parties and has now been corrected. This paragraph specifically permits a railroad to maintain the required records either in writing or electronically, and the record may be part of a single master report covering an entire group of cars. Whatever format the railroad elects to use to record the information, it must contain the specific information listed in this paragraph.

Paragraph (h) specifies an additional contingent component of the calendar day exterior mechanical inspection. If a car requiring a single car test is moved in a train carrying passengers or available to carry such passengers to a place where the test can be performed, then the single car test must be performed before or during the exterior calendar day mechanical inspection. This provision has been retained from the 1997 NPRM. The comments submitted by APTA suggested that the word "next" be inserted prior to "calendar day mechanical inspection." FRA did not make this change as it would provide greater latitude than FRA intended. Paragraph (h) applies to equipment that is already in transit from the location where repairs were conducted that required the performance of a single car test. Thus, in order to remain consistent with the provisions contained in § 238.311(f) such cars must receive the single car test prior to, or as part of, the car's exterior calendar day mechanical inspection. Although FRA recognizes the concerns of labor representatives with regard to this provision, FRA believes that it is necessary to provide the railroads the flexibility to make the necessary repairs to a piece of equipment and then move it to a location which is most conducive to performing the required single car test. FRA currently permits such flexibility and is not aware of any significant safety problems that have arisen as a result of such a practice. However, in order to ensure the safe movement of such equipment, FRA has added various inspection and tagging requirements in § 238.311(f) that must be performed prior to hauling such equipment to another location for the performance of a single car test. (See section-by-section discussion of § 238.311.)

Section 238.305 Interior Calendar Day Mechanical Inspection of Passenger Cars

This section contains the requirements for the performance of interior mechanical inspections on passenger cars (which includes, e.g., passenger coaches, MU locomotives, and cab cars) each calendar day that the equipment is used in service except under the circumstances described in paragraph (d). Unlike the exterior calendar day mechanical inspection, FRA in paragraph (b) of this section permits the interior inspections of passenger cars to be performed by "qualified persons," individuals qualified by the railroad to do so. Thus, these individuals need not meet the definition of a "qualified maintenance person."

As noted in the 1997 NPRM, FRA's original position was to require the interior inspections to be performed by qualified maintenance persons. However, after several discussions with members of the Working Group and several other representatives of passenger railroads, FRA determined that the training and experience typical of qualified maintenance persons is not necessary and often does not apply to inspecting interior safety components of passenger equipment. In addition, the flexibility created by permitting someone less qualified than a qualified maintenance person can reduce the cost of performing the mechanical safety inspection since the most economical way to accomplish the mechanical inspection is to combine the exterior inspection with the Class I brake test and then have a crewmember inspect on arrival at the final terminal or have a train coach cleaner combine the interior coach inspection with coach cleaning.

Paragraph (c) lists various components that are required to be inspected as part of the interior calendar day mechanical safety inspection. As a minimum, FRA requires that the following components be inspected: trap doors; end and side doors; manual door releases; safety covers, doors and plates; vestibule step lighting; and safety-related signs and instructions. Consistent with the discussions regarding the movement of defective equipment with non-running gear defects, all en route defects and all noncomplying conditions under this section must be repaired at the time of the daily interior inspection or the equipment would be required to be locked-out and empty in order to be placed or remain in passenger service with the exception of a defect under § 238.305(c)(5). (See § 238.9 for a discussion of the prohibitions against using passenger equipment containing defects, and § 238.17 for a discussion of the movement of defective equipment for purposes of repair.)

It should be noted that two of the items contained in paragraph (c) have been slightly modified in order to clarify FRA's intent and to ensure the safety of the traveling public. Paragraph (c)(5), regarding the continuing use of a car with a defective door, has been modified by the addition of subparagraph (c)(5)(iii), which requires that at least one operative and accessible door be available on each side of the vehicle in order for the car to continue to be used in passenger service. FRA believes the addition of this requirement is necessary to ensure that passengers have adequate egress from the equipment should an emergency occur.

Paragraph (c)(8) has also been modified to clarify that the inspection of the manual door releases, as proposed in the 1997 NPRM, need only be made to the extent necessary to verify that all D rings, pull handles, or other means to access manual door releases are in place based on a visual inspection. FRA recognizes that inspection of the actual manual door release would be overly burdensome, costly, and unnecessary due to the relative reliability of such devices. It should also be noted that the final rule contains a new paragraph (c)(9) which requires that the interior mechanical inspection ensure that all required emergency equipment, including fire extinguishers, pry bars, auxiliary portable lighting, and first aid kits be in place. These items are required pursuant to the regulations on passenger train emergency preparedness contained at 49 CFR part 239, and FRA believes that the inspection to ensure the presence of such equipment is appropriate under this section.

Paragraphs (d) and (e) contain provisions which are identical to certain requirements pertaining to exterior calendar day mechanical inspections. Paragraph (d) allows long-distance intercity passenger trains that miss a scheduled calendar day mechanical inspection due to a delay en route to continue in passenger service to the location where the inspection was scheduled. Paragraph (e) contains the recordkeeping requirements related to the performance of interior calendar day mechanical inspections. FRA believes that proper and accurate recordkeeping is the cornerstone of any inspection process and is essential to ensuring the performance and quality of the required inspections. Without such records the inspection requirements would be difficult to enforce. Although recordkeeping was discussed in the Working Group and FRA believes it to be an integral part of any inspection requirement, FRA inadvertently omitted any such requirements in the 1997 NPRM specifically related to mechanical inspections. This omission was brought to FRA's attention through verbal and written comments provided by various interested parties and has been corrected. This paragraph specifically permits a railroad to maintain the required records either in writing or electronically, and the record may be part of a single master report covering an entire group of cars. Whatever format the railroad elects to use to record the information, it must contain the specific information listed in this paragraph.

Section 238.307 Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles Used in Passenger Trains

This section contains the requirements for performing periodic mechanical inspections on all passenger cars and all unpowered vehicles used in passenger trains. Paragraph (b) makes clear that the periodic mechanical inspections required under this section are to be performed by a qualified maintenance person as defined in § 238.5. In the 1997 NPRM, FRA proposed that the following components be inspected for proper operation and repaired, if necessary, as part of the periodic maintenance of the equipment: emergency lights; emergency exit windows; seats and seat attachments; overhead luggage racks and attachments; floor and stair surfaces; and hand-operated electrical switches. See 62 FR 49808-09. FRA further proposed that such periodic inspections be performed every 180 days. As noted above, FRA, with the intent of requiring their inspection on a periodic basis, removed certain items previously proposed in the exterior calendar day mechanical inspection as they could not be easily inspected without proper shop facilities.

After a review of the industry's practices regarding the performance of periodic mechanical-type inspections, FRA believes that some of the items removed from the exterior calendar day mechanical inspection as well as some of the items previously proposed in the 180 day periodic mechanical inspection should be and are currently inspected on a more frequent basis by the railroads. As it is FRA's intent in this proceeding to attempt to codify the current best practices of the industry, FRA believes that the current intervals for inspecting certain components should be maintained. Consequently, FRA is modifying the time interval for conducting periodic mechanical inspections to include a 92-day and a 368-day periodic inspection.

In paragraph (c), FRA requires the periodic inspection on a 92-day basis of certain mechanical components previously proposed as part of the exterior calendar day mechanical inspection, as well as an inspection of floors, passageways, and switches. The mechanical components to be inspected that were previously included as part of the calendar day mechanical inspection include verification that all trucks are equipped with a device or securing arrangement to prevent the truck and car body from separating in case of derailment and that all center castings

on trucks are not cracked or broken. FRA will also require a 92-day inspection of emergency lighting systems as they are critical to the safety of passengers in the event of an accident or derailment. FRA is adding an inspection of the roller bearings to the 92-day inspection. Although this component was inadvertently left out of the NPRM, FRA believes that roller bearings are an integral part of the mechanical components and must be part of any mechanical inspection scheme. Furthermore, several labor commenters recommended inspections criteria similar to that contained in 49 CFR Part 215, which specifically addresses the condition of roller bearings. See 49 CFR § 215.115. As roller bearings are best viewed in a shop facility context, FRA is adding the inspection of this component to the 92-day periodic mechanical inspection which is consistent with the current practices of the industry. FRA is also adding the general conditions and components previously proposed in § 238.109(b) (62 FR 49801-802) to the 92-day periodic mechanical inspection contained in this paragraph. As the conditions previously proposed in § 238.109(b) were intended to ensure that the railroads had an inspection scheme in place to ensure that all systems and components of the equipment are free of conditions that endanger the safety of the crew, FRA believes that a specific inspection interval is better suited to address the general condition of the equipment and ensure the safety of the riding public and railroad employees. This paragraph also requires that all of the components inspected as part of the exterior and interior calendar day inspection be inspected at the 92-day periodic inspection.

Paragraph (d) of this section retains a semi-annual periodic inspection for certain components as proposed in the 1997 NPRM. In the NPRM, FRA proposed a 180-day periodic inspection, but in order to remain consistent with the 92-day inspection scheme this paragraph requires a 184-day periodic inspection of certain mechanical components. These include: seats; luggage racks; beds; and emergency windows. This paragraph also contains an added requirement related to the inspection of the couplers; couplers were removed from the calendar day inspection and have been inserted in the 184-day inspection scheme. FRA is placing the coupler inspection at this interval rather than at the 92-day interval in order to reduce the amount of coupling and uncoupling of

equipment that will be required. In paragraph (e) FRA has extended the inspection interval related to manual door releases over that which was proposed in the 1997 NPRM. Due to the general reliability of these devices and because they are partially inspected on a daily basis, FRA believes that an annual inspection of the releases will ensure their proper operation. Thus, the final rule requires an inspection of the manual door releases every 368 days.

In paragraph (b) FRA has attempted to make clear that, although FRA has established certain periodic inspection intervals in order to establish a default interval, FRA will allow railroads to develop alternative intervals for performing such inspections for specific components or equipment based on a more quantitative reliability assessment completed as part of their system safety programs. FRA expects that railroads will utilize reliability-based maintenance programs as appropriate, given this opportunity to do so. As successful reliability based maintenance programs are dynamic, it is expected that, in the process of defining and documenting the reliable use of equipment or specific components, over time, continued assessments may indicate a need to increase or decrease inspection intervals. FRA will only permit lengthened inspection intervals beyond the default intervals when such changes are justified by a quantitative reliability assessment. The previously described inspection intervals are based on sound but limited information provided to FRA that FRA believes represents a combination of operating experience, analytical analyses, knowledge and intuition. FRA expects that railroads will collect and respond to additional data throughout the operating life of the equipment.

FRA believes that the approach taken to identify the stated default inspection intervals contained in this section combined both qualitative, or subjective, judgement with available quantitative information. FRA believes this approach is appropriate for the conservative default strategy defined. However, FRA recognizes that this mixed approach does not yield a quantified level of equipment reliability. The reliability of a system or component is defined as the probability that, when operating under stated environmental conditions, the system or component will perform its intended function adequately for a specified interval of time, number of cycles of operation, or number of miles. Reliability is a quantitative measure. FRA believes that quantified, high levels of reliability are desired for the continued safe operation

of passenger equipment. Therefore, FRA encourages equipment owners to perform additional sensitivity analyses to determine which components or equipment has the greatest potential for introducing risk, thus requiring the most careful monitoring to increase reliability while reducing the consequences of failure. FRA believes that, in addition to component design reliability, quality assurance, as well as maintenance and inspection proficiency may be considered and evaluated by the equipment owners as a part of this process. When considering the reliable use of passenger equipment, elements such as couplers as well as suspension systems; trucks; side bearings; wheels; jumpers; cable connections; buffer plates; diaphragms; and secondary brake systems, and human factors as it relates to inspecting and maintaining these elements may be considered.

Component level structural fatigue, corrosion, and wear are variables that may be considered to bound or introduce uncertainty in passenger equipment performance, effectively reducing reliability as well.

Given the limited quantitative information that is presently available regarding factors that influence the reliability of passenger equipment, the primary sources of information available for initial reliability assessments include: judgement; simulations; field, laboratory, and office experiments; operating environment and maintenance process reviews; and accident and near-miss investigations. FRA believes that in the operation of passenger equipment, where failure costs are high and casualties infrequent, accident data for informed decision making may be scarce or not fully applicable. Further, legal and punitive threats may provide significant impediments to identifying the contributing, initiating, and compounding causes of failures. Data from near-miss, or near-catastrophic incidents may be found to be instructive, but often not all of the parameters entering a quantitative analysis are recorded or communicated in these cases.

FRA believes that for the initial reliability assessments of passenger equipment and components qualified judgment will be an important source of quantitative information. Qualified judgment is based upon both the accumulation of experience and a mental synthesis of factors allowing the evaluator to assess the situation and produce results. Such judgment has a rightful place in making initial quantitative reliability assessments because current available data is often deficient for the evaluation of a

particular situation. However, as adequately structured databases are developed and implemented for reliability center maintenance programs, FRA believes more reliance can be placed on objective data and reliability assessments will be based on a combination of data and judgment. FRA believes that, in the very near term, sole reliance cannot be placed on objective data sources to provide quantitative reliability assessments; instead, adequately qualified and unbiased judgment will continue to be required in conjunction with verifiable operating data for analysis purposes.

When planning the maintenance of a component or system to protect the safety and operating capability of the equipment, FRA expects that a number of items will be considered in the reliability assessment process, which include:

1. The consequences of each type of functional failure;
2. The visibility of a functional failure to the operating crew (evidence that a failure has occurred);
3. The visibility of reduced resistance to failure (evidence that a failure is imminent);
4. The life or age-reliability characteristics of each item;
5. The economic tradeoff between the cost of scheduled maintenance and the benefits to be derived from it;
6. A multiple failure, resulting from a sequence of independent failures, may have consequences that would not be caused by any one of the individual failures alone. These consequences are taken into account in the definition of the failure consequences for the first failure; and
7. A default strategy will continue to govern decision making in the absence of full information or agreement. This strategy provides for conservative initial decisions, to be revised on the basis of information derived from operating experience.

FRA believes that a variety of qualitative approaches, such as a Failure Modes, Effects, Criticality Analysis (FMECA) may be useful in evaluating the potential consequences of a functional failure. FRA believes a qualitative approach may be used in complement and combined with a quantitative approach such as Probabilistic Risk Analyses (PRA) or Quantified Risk Analyses (QRA) which may include structured probabilistic Event Tree, Fault Tree, or Influence Diagram analyses to provide additional insight to railroads regarding the reliable use of their equipment. Quantitative approaches are useful to characterize the details of a system

whereas qualitative approaches can provide characterization of the general performance quality of the system analyzed.⁴ Component level reliability analysis centered around a quantitative, deterministic design approach such as Damage Tolerance Analysis (DTA) may be appropriate when information about the ability of a structural component to sustain anticipated loads in the presence of fatigue, corrosion, or accidental damage is required.⁵

FRA expects that analyses of individual components investigated as a part of the reliability assessment process may require equipment owners to collect and consider information regarding: a component's physical features and conditions; a component's actual operating use; the existence of manufacturing defects and tolerances; the effects of repairs or modifications made to the component; and capabilities of available nondestructive evaluation methods used for inspection. Management of effective reliability-based maintenance programs requires an organized information system for surveillance and analysis of the performance of each component under the known operating conditions. FRA believes that the information derived from such operating experience can provide information of failures that could affect operating safety; failures that have operational consequences; the failure modes of units removed as a result of failures; as well as the general condition of unfailed parts in units that have failed and serviceable units inspected as samples.

As stated above, at the time of the development of default maintenance intervals, FRA used the available information to determine the inspection intervals necessary to protect safety. However, FRA believes that the optimum inspection tasks, methods, and intervals as well as the applicability of age or life limits will be best obtained from reliability analyses based on additional service-based data collection, in some cases coupled with appropriate deterministic analyses to both ensure safety and maximize reliability. For further information regarding sources of reliability theory and analysis, FRA recommends that the following materials be considered:

- ANSI (American National Standards Institute)/ASQC (American Society for

Quality) S2 (1995) Introduction to Attribute Sampling;

- ANSI/ASQC Z1.4 (1993) Sampling Procedures and Tables for Inspection by Attributes;
- ANSI/ASQC Z1.9 (1993) Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming;
- Handbook of Reliability Engineering and Management, W. G. Ireson, McGraw Hill, 1996;
- MIL-STD-414 (1957) Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming;
- MIL-STD-1234A (1974) Single and Multi-Level Continuous Sampling Procedures and Tables for Inspection by Attributes;
- Reliability-Centered Maintenance, F. S. Nowlan and H. F. Heap, Final Report for Contract MDA 903-75-C-0349, Office of Assistant Secretary of Defense, Washington, D.C., 1978;
- Reliability-Centered Maintenance, A. M. Smith, McGraw Hill, 1992;
- Reliability-Centered Maintenance, J. Moubrey, McGraw Hill, 1997; and
- Reliability in Engineering Design, K.C. Kapur and L. R. Lamberson, John Wiley & Sons, 1977.

Paragraph (e) contains the recordkeeping requirements related to the performance of periodic mechanical inspections. FRA believes that proper and accurate recordkeeping is the cornerstone of any inspection process and is essential for ensuring the performance and quality of the required inspections. Without such records, the inspection requirements would be difficult to enforce. Although recordkeeping was discussed in the Working Group and FRA believes it to be an integral part of any inspection requirement, FRA inadvertently omitted any such requirements in the NPRM specifically related to mechanical inspections. This omission was brought to FRA's attention through verbal and written comments provided by various interested parties and has been corrected. This paragraph specifically permits a railroad to maintain the required records either in writing or electronically. Whatever format the railroad elects to use to record the information, it must contain the specific information listed in this paragraph.

Section 238.309 Periodic Brake Equipment Maintenance

This section contains the requirements related to the performance of periodic brake maintenance for various types of passenger equipment, referred to in the industry as clean, oil, test, and stencil (COT&S). Although FRA has considered the concerns raised by certain labor representatives during this rulemaking, FRA does not agree with the conclusions drawn by these

commenters with regard to the testing and data submitted to FRA regarding modest extensions of the COT&S intervals for equipment utilizing certain types of brake valves. All of the COT&S intervals contained in this section are based, at least in part, on current operations under existing waivers and on data and information which FRA believes provide substantial support that the valves can be safely operated for the periods of time provided in this section. Furthermore, FRA believes that the stringent inspection and testing regiment and the single car test requirements contained in this final rule also provide sufficient additional safeguards to permit modest increases in the COT&S intervals for equipment outfitted with certain brake valves and other equipment having generally shown the ability to operate for longer periods without failure.

Paragraph (b) extends the periodic maintenance interval for MU locomotive fleets that are 100 percent equipped with air dryers and modern brake systems from 736 days to 1,104 days. The requirement remains 736 days for fleets that are not 100 percent equipped with air dryers or that are equipped with older brake systems. FRA bases this extension on tests conducted by Metro-North and monitored by FRA field inspectors. These tests revealed that after three years brake valves on MU locomotives equipped with air dryers were very clean and showed little or no signs of deterioration. Based on the results of these tests, FRA is confident that these valves can safely operate for three years between periodic maintenance. FRA believes this extension of the periodic maintenance interval will result in a cost savings to those railroads that operate MU locomotives equipped with air dryers.

Paragraph (c) extends the periodic maintenance interval on conventional locomotives equipped with 26-L or equivalent types of brakes from the current standard of 736 days to 1,104 days. The required periodic maintenance interval remains at 736 days for locomotives equipped with other types of brake systems. This requirement merely makes universal a practice that has been approved by waiver for several years. See H-80-7. FRA believes that locomotives equipped with 26-L brakes have demonstrated an ability to operate safely for three years between periodic maintenance.

Paragraph (d) extends the periodic maintenance interval on passenger coaches and other unpowered vehicles equipped with 26-C or equivalent brake systems from 1,104 days to 1,476 days. This extension is based on tests

⁴ Evaluation Approaches & Quantification (Chapter 8), "The Role of Human Error in Design, Construction, and Reliability of Marine Structures." Robert G. Bea, Report No. SSC-378, U.S. Coast Guard, Washington, D.C. 1994, pp. 127-149.

⁵ "Reliability and Risk Analysis for Design and Operations Planning of Offshore Structures." T. Moan, Sixth ICOSSAR, Innsbruck, August 1993.

performed by Amtrak. Based on these tests, FRA granted Amtrak a waiver for this extension on July 26, 1995. See FRA Docket No. PB 94-3. Amtrak has operated under the terms of this waiver for several years with no problems. Consequently, based on Amtrak's experience, FRA believes all passenger cars with 26-C equipment can safely be operated for four years between periodic maintenance.

Paragraph (e) recognizes that the same extensions applicable to locomotives and passenger coaches should be applied to control cab cars that use brake valves that are identical to the 26-C valves used in passenger cars or the 26-L valves used on locomotives. Consequently, based on the information and tests conducted on those valves as well as waivers currently existing, FRA is extending the periodic maintenance interval for cab cars to 1,476 days or 1,104 days for those cab cars that use brake systems identical to the 26-C and 26-L, respectively. This extension is consistent with recent requests for waivers received by FRA.

In paragraph (a)(2) FRA provides that a railroad may petition FRA, under § 238.21, to approve alternative maintenance procedures providing equivalent safety. Under this provision, railroads could propose using periodically scheduled single car tests to extend the time between required periodic maintenance on passenger coaches. FRA believes that the single car test provides a good alternative to more frequent periodic maintenance. In fact, in the 1994 NPRM on power brakes, FRA proposed the elimination of time-based COT&S and in its stead proposed time intervals for conducting single car tests, ranging from three to six months, depending on the utilization rate of the passenger equipment. See 59 FR 47690-91, 47710-11, and 47740-41. However, comments received and discussions with members of the Working Group revealed that many passenger railroads would rather perform periodic maintenance than more frequent single car tests. One reason for this is that some operators would rather take equipment out of service every few years and perform the overhaul of the brake system than have equipment out of service for shorter periods every few months. Therefore, FRA has retained periodic maintenance intervals but provided the alternative to railroads to propose single car testing intervals in order to reduce the frequency with which the periodic maintenance is performed. Consequently, railroads are afforded some flexibility to determine the type of maintenance approach that best suits their operations. However, in

response to concerns raised by a labor commenter, it should be noted that FRA would likely not completely eliminate the need to perform COT&S on a periodic basis but might consider extending the interval between such attention depending on the frequency of the single car test intervals proposed by a railroad.

Section 238.311 Single Car Test

This section contains the requirements for performing single car tests on all nonself-propelled passenger cars and all unpowered vehicles used in passenger trains. As previously discussed in the general preamble, FRA is modifying the requirements related to the performance of single car tests from those that were proposed in the 1997 NPRM. In paragraph (a), based on the recommendations of representatives from both rail labor and rail management, FRA is referencing the single car testing procedures which were developed by APTA PRESS rather than the AAR single car testing procedures referenced in the 1997 NPRM. The single car test procedures were issued by APTA on July 1, 1998, and are contained in APTA Mechanical Safety Standard SS-M-005-98. The single car test procedures issued by APTA are more comprehensive and better address passenger equipment than the older AAR recommended practices. In paragraph (a), FRA is also slightly modifying the applicability of this section for clarity. In the 1997 NPRM, FRA proposed to require the performance of single car tests on all passenger cars and other unpowered vehicles used in passenger trains. However, the definition of passenger cars includes self-propelled vehicles such as MU locomotives, to which FRA did not intend the single car test requirements to apply. Consequently, FRA has modified the language of paragraph (a) to clarify that the testing requirements apply to nonself-propelled passenger cars and unpowered vehicles used in passenger trains.

Paragraph (b) requires that all single car tests be performed by a qualified maintenance person. A single car test is a comprehensive brake test that requires the skills and knowledge of a highly trained and skilled person with mechanical expertise. Railroads currently use personnel which would generally meet the definition of "qualified maintenance person" as defined by this part to perform single car tests, and FRA believes that this practice should continue.

FRA is also modifying some of the circumstances under which a single car test is required to be performed in

paragraphs (c) through (e). FRA agrees with several of the commenters that the 1997 NPRM may have been over-inclusive in listing the components whose repair, replacement, or removal would trigger the performance of a single car test. Paragraph (c) lists the wheel defects that would trigger the requirement to perform a single car test. FRA believes that the wheel defects contained in this paragraph generally tend to indicate some type of braking equipment problem. FRA believes that merely changing a wheel to correct a wheel defect that is actually caused by a brake system problem will only lead to a continuation of the problem on the new wheel and will increase repair costs to the railroad. A test that checks for the root cause of the defect is not only a good safety practice, but is a good business practice that will lead to reduced operating costs. However, in accordance with the discussions conducted with the Working Group in mid-December of 1997, paragraph (d) makes clear that FRA will not mandate the performance of a single car test for wheel defects, other than a built-up tread, if the railroad can establish that the wheel defect is due to a cause other than a defective brake system. Thus, the burden will fall on the railroad to establish and maintain sufficient documentation that a wheel defect is due to something other than a brake-related cause. FRA makes clear that if the railroad cannot establish the specific non-brake related cause for a wheel defect, it is required to perform a single car test.

Paragraph (e) requires a railroad to conduct a single car test if one or more of the identified brake system components is removed, repaired, or replaced. This paragraph also requires that a single car test be performed if a passenger car or vehicle is placed in service after having been out of service for 30 or more days. FRA believes that these requirements will ensure that brake system repairs have been performed correctly and that the car's brake system will operate as intended after repairs are made or after the car has been in storage for extended periods. As noted above, FRA has amended the list of brake components to include only those circumstances where a relay valve, service portion, emergency portion, or pipe bracket is removed, repaired, or replaced. Whenever any other component previously contained in the 1997 NPRM is removed, repaired, or replaced, paragraph (g) requires that only that portion that is renewed or replaced be tested. FRA believes that the items

contained in paragraph (g) can generally be removed, replaced, or repaired without affecting other portions of the brake system, thus reducing the need to perform a single car test. FRA believes that the requirements contained in paragraphs (e) and (g) are more consistent with the current practices of most passenger railroads than the requirement proposed in the 1997 NPRM.

Paragraph (f) provides that if a single car test cannot be made at the point where repairs are made, the car may be moved in service to the next forward location where the test can be made. This paragraph requires that at a minimum the single car test be completed prior to, or as a part of, the car's next calendar day mechanical inspection. As noted previously, labor representatives object to permitting cars to be used in passenger service after a repair is made without the required single car test being performed. These commenters contend that the performance of a single car test is necessary prior to using the vehicle in order to determine whether any other unknown defects to the brake system exist. Although FRA recognizes the concerns of labor representatives with regard to this provision, FRA believes that it is necessary to provide railroads the flexibility to make the necessary repairs to a piece of equipment and then move it to a location which is most conducive to performing the required single car test. However, in order to address labor's concerns and to ensure the safe movement of such equipment, FRA has added a visual inspection requirement and a tagging requirement that must be met prior to the railroad being allowed to haul a car in the fashion provided in this paragraph. Consequently, this paragraph requires that prior to moving a car in passenger service for the purposes of conducting a single car test, a visual inspection verifying the application and release of the brakes on both sides of the repaired car must be conducted and the car must be appropriately tagged to indicate the need to perform a single car test.

Section 238.313 Class I Brake Test

This section contains the requirements related to the performance of Class I brake tests. The requirements in this section apply to all passenger coaches, control cab cars, MU locomotives, and all nonself-propelled vehicles that are part of a passenger train. After consideration of the comments and information submitted, FRA intends to make very minor changes to the requirements regarding

Class I brake tests from those that were previously proposed in the 1997 NPRM.

Paragraph (a) of this section requires that a Class I brake test be performed at least once each calendar day that a piece of equipment is placed in service. As noted previously in the 1997 NPRM, the Working Group discussed and debated when and how a Class I brake test should be performed. Labor representatives stressed the need for a thorough brake test performed by qualified mechanical inspectors on every passenger train. These representatives strongly contended that this brake test must be performed prior to the first daily departure of each passenger train. On the other hand, representatives of passenger railroads expressed the desire to have flexibility in conducting a comprehensive brake inspection, arguing that safety would be better served if railroads were permitted to conduct these inspections on a daily basis. Although FRA agrees with the position advanced by many labor representatives that some sort of car-to-car inspection must be made of the brake equipment prior to the first run of the day in most circumstances, FRA does not agree that it is necessary to perform a full Class I brake test in order to ensure the proper functioning of the brake equipment. As FRA views a Class I brake test as a comprehensive inspection of the braking system, FRA believes that commuter and short-distance intercity passenger train operations must be permitted some flexibility in conducting these inspections. Consequently, paragraph (a) requires that commuter and short-distance intercity passenger train operations perform a Class I brake test sometime during the calendar day in which the equipment is used.

FRA also recognizes the differences between commuter or short-distance intercity operations and long-distance intercity passenger train operations. Long-distance intercity passenger trains do not operate in shorter turnaround service over the same sections of track on a daily basis for the purpose of transporting passengers from major centers of employment. Instead, these trains tend to operate for extended periods of time, over long distances with greater distances between passenger stations and terminals. Further, these trains may operate well over 1,000 miles in any 24-hour period, somewhat diminishing the opportunity for conducting inspections on these trains. Therefore, FRA believes that a thorough inspection of the braking system on these types of operations must be conducted prior to the trains' departure from an initial starting

terminal. Consequently, paragraph (b) retains the proposed requirement that a Class I brake inspection be performed on long-distance intercity passenger trains prior to departure from an initial terminal. FRA does not believe there would be any significant burden placed on these operations as the current regulations require that an initial terminal inspection be performed at these locations. Furthermore, virtually all of the initial terminal inspections currently conducted on these types of trains are performed by individuals who would be considered qualified maintenance persons pursuant to § 238.5.

Paragraph (b) also retains the requirements proposed in the 1997 NPRM related to the performance of Class I brake tests on long-distance intercity passenger trains every 1,500 miles or every calendar day, whichever comes first. After reviewing the information and comments submitted by labor representatives, the information and comments provided by Amtrak, and based upon the independent information developed by FRA, FRA believes that the enhanced inspection scheme contained in this final rule will ensure the continued safety of long-distance intercity passenger trains. (See previous discussion of comments in general preamble portion of this document.)

Contrary to the statements made in the comments submitted by some labor representatives, FRA is not merely increasing the distance between brake inspections for these types of trains. Rather, FRA is increasing both the quality and the content of the inspections that must be performed on long-distance intercity passenger trains and, thus, increasing the safety of such trains. Under the current regulations these passenger trains are required to receive an initial terminal brake inspection at the point where they are originally assembled, and from that point the train must receive an intermediate brake inspection every 1,000 miles. The current 1,000-mile inspection merely requires the performance of a leakage test, an application of the brakes and the inspection of the brake rigging on each car to ensure it is properly secured. See 49 CFR 232.12(b). The current 1,000-mile brake inspection does not require 100 percent operative brakes prior to departure and does not require piston travel to be inspected. The current regulations also do not require the performance of any type of mechanical inspection on passenger equipment at 1,000-mile inspection points or at any other time in the train's journey. Thus,

under the current regulations a long-distance intercity passenger train can travel from New York to Los Angeles on one initial terminal inspection, a series of 1,000-mile inspections, and no mechanical inspections.

Whereas, this rule will require the performance of a Class I brake test, which is more comprehensive than the current initial terminal inspection, at the point where the train is originally assembled and will require the performance of another Class I brake test every 1,500 miles or every calendar day thereafter, whichever comes first, by highly qualified inspectors. Thus, at least every 1,500 miles or every calendar day a long-distance passenger train will be required to receive a brake inspection which is more comprehensive than the current initial terminal inspection and which requires that the train have 100 percent operative brakes and have piston travel set within established limits. Furthermore, this rule will require the performance of an exterior and interior mechanical inspection every calendar day that the train is in service. Consequently, the inspection scheme proposed in the 1997 NPRM and retained in this final rule will, in FRA's view, increase the safety and better ensure the integrity of the brake and mechanical components of long-distance passenger trains.

FRA also believes that some recognition must be given to the various types of advanced braking system technologies used on many long-distance intercity passenger trains. Many of these advanced technologies are not found with any regularity in freight operations and thus the reliability and performance of brake systems on these passenger trains enhance the safety of these trains and, when combined with other aspects of this discussion, support FRA's belief that these brake systems can safely be operated with the inspection intervals that were proposed in the 1997 NPRM. Dynamic brakes are typically employed on these types of trains 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 on today's long-distance passenger trains are far more reliable than was the case several decades ago. Other technological advances utilized with regularity by these passenger trains 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.

- 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 were not in wide spread use until after 1980. Furthermore, most of the noted technological advances just started to be integrated into one efficient and reliable braking system within the last decade. Consequently, the technology incorporated into the brake equipment used in today's long-distance intercity passenger trains has increased the reliability of the braking system and permits the safe operation of the equipment for extended distances even though a portion of the braking system may be inoperative or defective.

FRA also disagrees with the contentions raised by certain labor representatives that the facts and data do not support the 500 mile extension in the brake inspection interval even with the more comprehensive inspection scheme. These commenters recommend that the current 1,000-mile brake inspection interval be retained together with the increased inspection regimen. These commenters contend that due to the large number of defects being found at 1,000-mile inspections the need to retain the inspection is justified. As an example and support for this position, the BRC submitted information containing numerous defective conditions compiled by carmen stationed at Union Station in Washington D.C. from January 1996 through February of 1997 that the carmen allegedly found on trains traveling through Union Station. After reviewing the documentation submitted, FRA does not believe the information supports the conclusion that 1,000-mile brake inspections must be maintained and that it would be unsafe to extend the distance between brake inspections under the inspection scheme contained in this final rule.

Due to the lack of detail contained in the information submitted by the BRC, it is impossible to determine whether the vast majority of the alleged defective conditions were defective under the Federal regulations or whether the conditions were merely in excess of

Amtrak's voluntary maintenance standards or operating practices. In addition, based on the description of some of the conditions, they would not be considered defective conditions under current Federal regulations. Furthermore, the vast majority of the conditions alleged in the document were not power brake defects, and thus, under the current regulations, would not have been required to have been inspected at a 1,000-mile inspection. Nor do the current regulations mandate any type of mechanical inspection on passenger equipment (other than on locomotives under 49 CFR part 229, of course). Moreover, as the vast majority of the alleged conditions were mechanical and wheel defects, FRA believes that these types of defective conditions will be addressed by the exterior calendar day mechanical inspection contained in this final rule which will be required to be performed every calendar day that a piece of equipment is in service.

FRA agrees with the comments submitted by the BRC that the data and information submitted by Amtrak regarding the allegedly defective equipment found at Washington, D.C., does not fully address whether the cars identified by carmen at that location were defective and does indicate that at least many of the cars were repaired for the defective condition noted within several days after moving through Washington, D.C. However, contrary to the conclusions reached by labor representatives, the fact that a car remained in service with an alleged defective mechanical or brake condition does not necessarily mean the train involved was in an unsafe condition or that the equipment was being moved illegally. The current regulations regarding freight mechanical equipment and the existing statutory mandates regarding the movement of equipment with defective safety appliances and brakes permit the movement of a certain amount of defective equipment to certain locations provided it is determined by a qualified person that such a movement can be made safely or that a sufficient percentage of the brakes remain operative. See 49 U.S.C. 20303, 49 CFR 215.9. As this final rule will specifically address the inspection of the mechanical components on passenger equipment and the movement of defective mechanical components, which is not covered by existing regulations, FRA believes that the amount of defective equipment being operated will be reduced significantly and/or handled safely in revenue trains. Although FRA agrees that the

information submitted by Amtrak regarding the number of cars set out at 1,000-mile inspection points does not reflect the true number of defects being found during the inspections, FRA does find it significant that a very small percentage of cars set-out by Amtrak are set-out at 1,000-mile inspection locations and that most set-outs occur en route.

FRA also finds it necessary to make clear that the number of cars alleged to have been found in defective condition at Union Station in Washington, D.C. is not indicative of a safety problem on long-distance intercity passenger trains. Assuming that all of the cars contained in BRC's submission were in fact defective as alleged, it appears that approximately 750 cars were defective. However, the information also reveals that approximately 1,300 trains were inspected; thus, using a conservative estimate of 10 cars per train, approximately 13,000 cars were inspected. As a result, approximately only 6 percent of the cars inspected were found to contain either a mechanical or brake defect. Furthermore, of the approximate 750 cars alleged to have been found defective, only approximately 20 percent of those contained a power brake-related defect. Consequently, only about 1-2 percent of the total cars inspected contained a power brake-related defect. Moreover, from the information provided it appears that none of the trains contained in the BRC submission were involved in any type of accident or incident related to the defective conditions alleged.

FRA believes that the key to any inspection scheme developed for long-distance intercity passenger trains is the quality of the inspection which is performed at a train's point of origin. FRA is convinced that if a train is properly inspected with highly qualified inspectors and has 100 percent operative brakes at its point of origin, then the train can easily travel up to 1,500 miles between brake inspections without significant deterioration of the braking system. FRA independently monitored a few long-distance intercity passenger trains running from New York to Miami, New York to New Orleans, and New York to Chicago and found that when the trains departed from their points of origin with a brake system that was defect free they arrived at destination without any defective conditions existing in their brake systems. These findings are consistent with FRA's experience in inspecting long-distance intercity passenger trains over the last several years. It should be noted that during this independent

monitoring, FRA did find some trains that after receiving initial terminal inspections still contained some defective conditions in the brake system. Although FRA believes that none of the defective conditions found would have prevented the safe operation of the trains, FRA recognizes that FRA as well as the railroads must be vigilant in ensuring that quality brake system inspections are performed on a train at its point of origin and at each location where a Class I brake test is required to be performed. Consequently, due to the comprehensive nature of Class I brake tests and the exterior calendar day mechanical inspection combined with the technological advances incorporated into the braking systems utilized in these types of trains and after a review of the data and information provided and based on FRA's experience with these types of operations, FRA is retaining the proposed 1,500 mile interval for the performance of Class I brake tests in this final rule.

Paragraph (c) contains a provision that was not proposed in the 1997 NPRM to address the inspection of cars added to an en route train. FRA has modified the Class I brake test requirements to ensure the proper operation of all cars added to a train while en route. This paragraph requires the performance of a Class I brake test on each car added to a passenger train at the time it is added to the train unless documentation is provided to the train crew that a Class I brake test was performed on the car within the previous calendar day and the car has not been disconnected from a source of compressed air for more than four hours prior to being added to the train. This requirement has been included in order to address the concerns raised by various labor representatives that no provisions were provided in the 1997 NPRM to address circumstances when cars are added to an en route train. Section 238.317 makes clear that if a car has received such inspection, the railroad will be required to perform a Class II brake test at the time the car is added to the train. FRA believes that these provisions are necessary to ensure the integrity of the brake system on every car added to an existing train and should not be a burden for railroads since cars are generally added to passenger trains at major terminals with the facilities and personnel available for conducting such inspections. Furthermore, these inspection requirements are very similar to what is currently required when a freight car is

added to a train while en route. See 49 CFR § 232.13.

Paragraph (d) requires that the Class I brake tests be performed by qualified maintenance persons. As FRA intends for Class I brake tests to be in-depth inspections of the entire braking system, which most likely will be performed only one time in any given day in which the equipment is used, FRA believes that these inspections must be performed by individuals possessing the knowledge to not only identify and detect a defective condition in all of the brake equipment required to be inspected but also the knowledge to recognize the interrelational workings of the equipment and have a general understanding of what is necessary to repair the equipment. Furthermore, most passenger railroads currently have a daily brake test performed by highly qualified mechanically trained employees so this requirement is not really a departure from current industry practice. (For a detailed discussion of "qualified maintenance person" see the section-by-section analysis for § 238.5 and the general preamble discussion related to qualified maintenance persons.)

Paragraph (e) provides railroads with the option to perform the Class I brake test either separately or in conjunction with the calendar day mechanical inspections. FRA has retained this provision simply to clarify that the two inspections need not be done at the same time or location as long as they are both performed sometime during the calendar day that a piece of equipment is in use.

Paragraph (f) prohibits a railroad from using or hauling a passenger train in passenger service from a location where a Class I brake test has been performed, or was required to have been performed, with less than 100 percent operating brakes. (See section-by-section analysis of § 238.15 for a detailed discussion of movement of defective equipment for purposes of repair or sale.)

Paragraph (g) contains a list of the safety-related items that must be inspected, tested, or demonstrated as part of a Class I brake test. This list was developed based on the experience and knowledge of FRA's motive power and equipment field inspectors familiar with the operations and inspection practices of passenger operations. The Working Group extensively discussed the items contained in this paragraph. Very few comments were submitted which addressed the specific items contained in this paragraph. One commenter did recommend that a few of the provisions be clarified to specifically address tread brakes. Therefore, paragraph (g)

generally retains all of the requirements proposed in the 1997 NPRM except to the extent that a few requirements have been slightly modified for clarity. Paragraph (g)(1) requires that an inspection be conducted on each side of each car to verify the application and release of each brake. This requirement is consistent with FRA's longstanding interpretation of what the current regulations require when conducting initial terminal and 1,000 mile brake inspections pursuant to § 232.12. For clarity and consistency, FRA has explicitly incorporated the requirement into this final rule. Minor modifications have been made to paragraphs (g)(3), (g)(5), and (g)(11) in order to clarify the intent of the requirements to brake systems utilizing tread brakes. It should be noted that the requirement contained in paragraph (g)(14) would bar the use of a train that current regulations allow to be placed in service. This paragraph requires that brake indicators must function as intended. Although this provision may require railroads to make more frequent repairs than are currently required, FRA believes these added costs are necessitated by—and offset by—the ability to use brake indicators during the performance of certain brake tests in lieu of direct observation of the brakes.

Paragraph (h) requires the qualified maintenance person that performs a Class I brake test to record the date, time and location of the test as well as the number of the controlling locomotive of the train. It should be noted that a requirement to record the total number of cars inspected during the Class I brake test has been added at paragraph (h)(4). FRA believes this information is necessary to ensure that the required inspection has been performed on all the cars in a train and provides a method for the tracking of cars added to en route trains. This minimal information is required to be available in the cab of the controlling locomotive to demonstrate to the train crew and future inspectors that the train is operating under a current Class I brake test. Furthermore, the use of such records or "brake slips" as they are known in the industry is the current practice of virtually all passenger railroads. FRA believes that this recordkeeping requirement adds necessary reliability, accountability, and enforceability to the inspection requirements contained in this section.

Paragraph (i) allows long distance, intercity passenger trains that miss a scheduled Class I brake test due to a delay en route to proceed to the point where the scheduled brake test was to be performed. This flexibility prevents

Amtrak or other operators of long distance trains from having to dispatch qualified maintenance persons to the location of a delayed train merely to meet the calendar day Class I brake test requirement. This is a common sense exception that will not compromise safety.

Section 28.315 Class IA Brake Test

This section contains the requirements regarding the performance of Class IA brake tests. As mentioned previously, although FRA agrees with the position advanced by many labor representatives that some sort of car-to-car inspection must be made of the brake equipment prior to the first run of the day, FRA does not agree that it is necessary to perform a full Class I brake test in order to ensure the proper functioning of the brake equipment in all situations. However, contrary to the position espoused by several railroad representatives, FRA believes that something more than just a determination that the brakes on the rear car set and release is necessary in many situations.

Currently, the quality of initial terminal tests performed by train crews is likely adequate to determine that brakes apply on each car. However, most commuter equipment utilizes "tread brake units" in lieu of cylinders and brake rigging of the kind prevalent on freight and some intercity passenger cars. It is undoubtedly the case that train crewmembers do not verify application of the brakes by tapping brake shoes while the brakes are applied—the only effective means of determining that adequate force is being applied. This is one reason why the subject railroads typically conduct redundant initial terminal tests at other times during the day. Further, train crews are not asked to inspect for wheel defects and other unsafe conditions, nor should they be asked to do so, given the conditions under which they are asked to inspect and the training they receive.

As noted previously, FRA is modifying the requirements for when a Class IA brake test must be performed from that which was proposed in the 1997 NPRM. FRA continues to believe that some type of car-by-car inspection must be performed prior to a passenger train's first run of the day if the train was used in passenger service the previous day without any brake inspection being performed after it has completed service and before it lays-up for the evening. However, FRA tends to agree with the comments submitted by APTA representatives that the need for such an inspection is minimized if a Class I brake test is performed within a

relatively short period of time prior to the first run of the day and the train has not been used in passenger service since the performance of that inspection. From a safety standpoint, it appears to be overkill to require the performance of a second comprehensive brake test when the equipment has not been used in passenger service and has remained on a source of compressed air since the last comprehensive brake test was performed. In such circumstances, FRA believes that the performance of a Class II brake test would be sufficient to determine if there are any problems with the braking system due to vandalism or other causes since the last comprehensive Class I brake test. Furthermore, as APTA's comments point out, commuter railroads have been safely operated in a fashion similar to this for a number of years. Consequently, paragraph (a)(1) of this section makes clear that a Class IA brake test is to be performed prior to the first morning departure of each commuter or short-distance intercity passenger train unless a Class I brake test was performed within the previous twelve hours and the train has not been used in passenger service and has not been disconnected from a source of compressed air for more than four hours since the performance of the Class I brake test. FRA believes that this exception is consistent with the concept of performing comprehensive brake and mechanical inspections at centralized locations as this provision affords railroads the ability to conduct a Class I brake test at the end of a train's daily operating cycle at a central location and then have the ability to move the train in non-passenger service to an outlying location without being required to perform a Class IA brake test prior to departure from the outlying terminal.

Paragraph (a)(2) requires that a Class IA brake test be performed prior to placing a train in service if that train has been off a source of compressed air for more than four hours. This requirement formalizes a long-standing agency interpretation of the existing power brake regulations but increases the time limit from two to four hours. Labor representatives maintain that any number of brake system problems can develop with equipment off air for only a short time, while management representatives contend that equipment can be left off air for extended periods of time with no problems. FRA believes the requirement contained in this paragraph is a fair compromise that allows railroads some operating flexibility, but does not allow equipment to be off air without a new

brake test for extended periods of time. FRA agrees that its longstanding administrative interpretation of allowing cars to be "off air" for only two hours was established prior to the development of new equipment that has greatly reduced leakage problems. However, contrary to the contentions of some commenters, FRA does not believe that cars should be allowed to be "off air" for extended periods without being retested. The longer cars sit without a supply of compressed air attached, the greater the chances are that the integrity of the system will be compromised, either by weather conditions or vandalism.

Paragraph (b) allows a commuter or short-distance intercity passenger train that provides continuing late night service that began prior to midnight to complete its daily operating cycle after midnight without performing another Class I or Class IA brake test on the train prior to its first departure after midnight. This provision is included to make clear that a train is not required to be stopped during its operating cycle in order to receive a Class I or Class IA brake test prior to its first departure of a calendar day. FRA also makes clear that this provision does not relieve a railroad from its responsibility under § 238.313 to perform a Class I brake test on each calendar day that the train is in use. Thus, a train operating past midnight must receive a Class I brake test sometime on each of the two days it is in use.

Paragraph (c) allows a Class IA brake test to be performed at a shop or yard site without needing the test repeated at the first passenger terminal if the train remains on air and in the custody of the crew. This provision is an incentive for railroads to conduct the tests at locations where they can be performed more safely and easily. FRA believes that a shop or yard location is more conducive for conducting a proper brake test. Raised platforms and other conditions frequently found at terminals can make the performance of a brake test difficult, if not hazardous.

Paragraph (d) permits the Class IA test to be performed by either a qualified person or a qualified maintenance person. Paragraph (e) prohibits a railroad from using or hauling a passenger train from a location where a Class IA brake test has been performed, or was required to have been performed, with less than 100 percent operative brakes. (See section-by-section analysis of §§ 238.15–238.17 for a discussion of movement of defective equipment for purposes of repair or sale.) Paragraph (f) contains the specific tasks that must be performed when conducting a proper

Class IA brake test. This paragraph makes clear that a Class IA brake test include: a check that each brake sets and releases; a test of the emergency brake application feature; a check of the deadman or other emergency control device; an observation that angle cocks and cutout cocks are properly set; an observation that brake pipe pressure changes are communicated to the rear of the train; and a test that the communicating signal system is known to be operative.

Paragraph (g) requires that the inspection of the set and release of the brakes be performed by walking the train so the inspector actually observes the set and release of each brake. Labor representatives strongly contended that this is the only way to do a proper brake test. They believe that observation of brake indicators does not give a reliable indication of effective brakes because the indicators sense brake cylinder pressure rather than the force of the brake shoe against the wheel or the pad against the disc. However, this paragraph allows an exception when railroads determine that direct observation of the set and release can place the inspector in danger. FRA acknowledges the contention of railroad management representatives that conditions at certain locations where Class IA tests may be performed could place the inspector in danger if he or she is required to place himself or herself in a position to actually observe the set and release of each brake. Where railroads determine this to be the case, FRA will permit the use of brake indicators for the set and release step of the Class IA brake test as long as the inspector takes a position where an accurate observation of the indicators can be made.

Section 238.317 Class II Brake Test

This section contains the requirements regarding how a Class II brake test is to be performed and contains the conditions for when a railroad is required to perform the brake test. The Class II brake test provides passenger railroads the flexibility to continue to use train crew personnel to perform the limited brake tests required when minor changes to the train occur. Both labor and management representatives to the Working Group recognized that train crews are capable of performing the relatively simple checks required by a Class II brake test and that the operations of most commuter and passenger railroads require the flexibility of having operating personnel perform these tests.

Paragraph (a) contains the circumstances which require the

performance of a Class II brake test. This paragraph has been modified from that which was proposed in the 1997 NPRM in order to clarify the requirements, to remain consistent with other provisions of this rule, and to address recent issues that have been raised with FRA regarding certain passenger train operations. Although paragraph (a)(1) retains the proposed requirement that a Class II brake test be performed whenever the control stand is changed, this paragraph has been modified in order to clarify that a Class II brake test need not be performed in circumstances where a train is being moved in non-passenger service from one track to another inside a terminal complex even though the changing of the control stand occurs during such movements. In order to effectuate such movements the control stand may be required to be changed several times. As these train movements are akin to switching movements in that they are performed over relatively short distances at very low speeds and pose minor safety hazards, FRA will not require the performance of multiple Class II brake tests in order to conduct such movements. It should be noted that § 238.319 requires the performance of a running brake test whenever the control stand is changed during these types of movements in order to ensure the operation of the brake system during these movements. This paragraph also requires the performance of a Class II brake test prior to the train's departure from the terminal complex with passengers.

Paragraph (a)(2) requires the performance of a Class II brake test prior to the first morning departure of a commuter or short-distance intercity passenger train where a Class I brake test remains valid as provided in § 238.315(a)(1). As discussed in the preceding section, FRA believes that in these limited circumstances the performance of a Class II brake test will adequately ensure the integrity of the brake system on the train since the performance of the last Class I brake test. Paragraph (a)(4) has been added in order to clarify that a Class II brake test is to be performed whenever cars or equipment are removed from a train. This provision is consistent with the concept that the proper operation of the brake system must be verified whenever an event occurs which may impact the integrity of the brake system and is consistent with current practice on virtually every railroad.

Paragraph (c) requires that passenger trains not depart from Class II brake tests which are performed at a terminal or a yard with any brakes cut-out,

inoperative, or defective unless the equipment is moved in accordance with § 238.15. The language of this requirement has been slightly modified from the language proposed in the 1997 NPRM, in order to make the provision consistent with the movement for repair provisions contained in this final rule. See § 238.15. Many terminals and most yards are locations where brake repairs can be effectuated. Thus, passenger equipment containing defective brake equipment would not be permitted to depart those locations capable of making the necessary repairs until repaired. If the necessary repairs cannot be effectuated at such locations the equipment must be properly tagged and moved pursuant to the requirements contained in § 238.15.

Paragraph (d) requires that a Class II brake test consist of: a check that the brakes on the rear unit of the train apply and release in response to brake control signals or a check that brake pipe pressure changes are properly communicated at the rear of the train by observation of a gauge at the end of the train or in the cab of the rear unit; a test of the emergency brake application and a test of the deadman pedal or other emergency control device on MU equipment; and a test of the communicating signal system to ensure it is operating as intended. The proposed requirements for observing a set and release of the brakes on the rear car and for ensuring that brake pipe pressure changes are properly communicated at the rear of the train have been combined and stated in the alternative in this final rule, as FRA believes that the performance of either task indicates proper trainline continuity and to perform both would be redundant and unnecessary. It should also be noted that the requirement regarding the testing of the emergency application and deadman pedal or other emergency control devices is only applicable to MU equipment due to the ease of performing such an inspection on that equipment. The requirement that the communicating signal system be tested is part of both a Class I and a Class IA brake test and has been added to this brake inspection as FRA believes the proper operation of the communicating signal system is necessary for the safe operation of a train and can be easily tested in a very short amount of time. FRA believes that if the equipment receives a full Class I brake test and a calendar day mechanical inspection at some time during each operating day, then these simple checks are adequate to confirm brake system performance at

intermediate terminals or turning points. This requirement basically codifies current industry practice.

Section 238.319 Running Brake Tests

This section contains the requirements for conducting running brake tests on the brakes of passenger trains. A running brake test is merely a brake application at the first safe opportunity to confirm that the brake system works as expected by the engineer. Paragraphs (a) and (c) require that a running brake test be performed in accordance with the railroad's established operating rules after the train has received a Class I, Class IA, or Class II brake test as safety permits. FRA believes that railroads are in the best position to determine when and where running tests can be safely performed. As most passenger railroads routinely conduct running brake tests, FRA believes that the requirements contained in this section capture an important safety check without changing current operating practice to any great extent. It should be noted that paragraph (b) has been added to this section to require the performance of a running brake test whenever the control stand used to control the train is changed to facilitate the movement of a passenger train from one track to another within a terminal complex while not in passenger service. As previously discussed, due to the special nature of these moves FRA believes that a running brake test adequately ensures the proper operation of the braking system during these movements and obviates the need to perform a Class II inspection each time the control stand is changed in these circumstances.

Subpart E—Specific Requirements for Tier II Passenger Equipment

Section 238.401 Scope

This subpart contains the design and performance requirements for Tier II passenger equipment—that is, passenger equipment operating at speeds exceeding 125 mph but not exceeding 150 mph. For the most part, compliance with the requirements of this section will be demonstrated by one-time analysis or initial acceptance tests.

The requirements contained in this subpart have their basis in discussions between Amtrak and FRA involving safety requirements for the operation of passenger trainsets at speeds up to 150 mph on the Northeast Corridor (NEC). Aware that FRA was considering the development of safety standards for high-speed passenger rail equipment, Amtrak asked FRA for assistance in developing a set of safety specifications

for the procurement of high-speed trainsets which would address FRA's safety concerns. As a result, Amtrak's high-speed trainsets, scheduled to begin regular passenger service in 1999, will very likely comply with all of the safety standards in this subpart.

Amtrak's discussions with FRA led it to sponsor a risk assessment of high speed rail passenger systems on the north end of the NEC—from New York to Boston. The discussions also prompted FRA to sponsor computer modeling to predict the performance of various equipment structural designs and configurations in collisions. A copy of the risk assessment performed by Arthur D. Little, Inc., for Amtrak is included in the docket of this rulemaking. The risk assessment was based on existing and predicted future right-of-way configurations and traffic density patterns. The risk assessment concluded that a significant risk of collisions at speeds below 20 mph and a risk of collisions at speeds exceeding 100 mph exist over the 20-year projected operational life of the HSTs—due to heavy and increasing conventional commuter rail traffic, freight rail traffic on the NEC, highway-rail grade crossings, moveable bridges, and a history of low speed collisions in or near stations and rail yards.

Based on the risk assessment and the results of the computer modeling, Amtrak and FRA determined that full reliance on collision avoidance measures rather than crashworthiness, though the hallmark of safe high-speed rail operations in several parts of the world, could not be implemented in corridors like the north end of the NEC. Existing traffic and right-of-way configurations do not permit implementation of the same collision avoidance measures that have proven successful in Europe and Japan. To compensate for the increased risk of a collision in the North American rail operating environment, a more crashworthy trainset design is needed. (FRA does note that on June 3, 1998, near Eschede in northern Germany, an ICE (Inter City Express) passenger train derailed at a speed of approximately 125 mph into the support structure of a highway bridge carrying traffic over the railroad right-of-way, collapsing the bridge. A number of the cars in the train were crushed, and 101 fatalities resulted from the derailment.) Accordingly, the set of structural requirements for Tier II passenger equipment in this final rule is more stringent than the current design practice for North American passenger equipment or for high-speed rail equipment in other parts of the world.

Section 238.403 Crash Energy Management Requirements

This section requires that each power car and trailer car be designed with a crash energy management system to dissipate kinetic energy during a collision.

During discussions with Amtrak for the safety provisions of its high-speed trainsets, FRA proposed very challenging crash energy management requirements based on predictions using computer modeling. Amtrak believed that meeting these requirements would be well beyond the current state of the art for passenger equipment design, and that an extensive and costly research and testing program would be required. As an alternative, Amtrak proposed a crash energy management design based on the demonstrated, commercially viable design developed in France and incorporated in the most recent design of the TGV trainset. FRA believes that Federal safety standards must be capable of implementation in the design of passenger equipment without driving the cost of implementation to the point that high-speed rail systems are no longer financially viable.

Paragraph (c) requires a Tier II train to have a crash energy management system capable of absorbing a minimum of 13 megajoules (MJ) of energy at each end of the train. The ability to absorb this energy must be partitioned as follows: a minimum of 5 MJ by the front end of the power car ahead of the operator's control compartment; a minimum of 3 MJ by the power car structure behind the operator's control compartment; and a minimum of 5 MJ by the unoccupied end of the first trailer car adjacent to the power car. This requirement can be met using existing technology. However, it will effectively prevent a conventional cab car from operating as the lead vehicle in a Tier II passenger train because such equipment cannot absorb 5 MJ of collision energy ahead of the train operator's position. Recent accidents involving trains operating with a cab car forward have demonstrated the vulnerability of this type of equipment in collisions. FRA believes such equipment should not be used in the forward position of a train that travels at speeds greater than 125 mph. FRA has also encouraged Amtrak to use an alternative lead vehicle where speeds exceed 110 mph and highway-rail grade crossings are prevalent. Further, FRA is specifically requiring in paragraph (f) that passenger seating be prohibited in the leading unit of a Tier II train.

In its comments on the NPRM, Talgo observed that the standards in this

section may be unattainable using current technology. However, Amtrak's high-speed trainsets have been shown to meet the requirements of this section. Specifically, testing has shown the crash energy absorbing components of the power car and in the end of the first trailer car adjacent to the power car to absorb the energy as provided in paragraph (c).

Talgo further commented that because the kinetic energy of a running train is a function of its mass and speed, paragraph (c) should not state a fixed value of energy. Rather, it believed paragraph (c) should state a value with respect to a specified speed to allow some flexibility for trains of varying mass and yet preserve the same level of safety. FRA recognizes that the kinetic energy of a running train is a function of its mass and speed, and if Tier II trains were at no risk of colliding with other trains of greater weight, then adopting Talgo's comment may be possible. However, the Tier II safety standards are intended to apply to high-speed passenger trains that, as necessitated by the United States rail operating environment, will operate commingled with heavier trains, especially heavy and long freight trains that may themselves operate at speeds up to 80 mph. In the event of a collision with a heavier train, a Tier II passenger train must confront the energy possessed by that train. FRA believes that a Tier II passenger train must have a crash energy management system capable of absorbing the minimum energy levels specified in paragraph (c) to protect the train's occupants in light of the risks of colliding with heavier trains and other objects along the railroad right of way. As a result, FRA believes it is inappropriate to adopt Talgo's comment.

Additionally, in its comments on the NPRM, Talgo believed paragraphs (c)(1)–(3) should be rewritten so that the total energy that is required to be absorbed is dissipated through all inter-car connections, not just through the first few cars. FRA notes that one of the reasons the energy absorbing structures of the leading car in a Tier II passenger train (power car) and the adjacent trailer car must themselves absorb the energy specified in this section is to reduce the risk and effects of secondary collisions throughout the train's subsequent vehicles. Secondary collisions (i.e., impacts with interior objects) can seriously harm or, in extreme cases, kill train occupants. This risk of harm to a Tier II passenger train's occupants is, therefore, minimized overall by requiring the energy absorbing structures in the first two train cars to

absorb collision energy before it poses a risk to the train's occupants.

Paragraph (d) requires that for a 30-mph collision of a train on tangent, level track with an identical stationary train, the deceleration of the occupied compartments of each trailer car shall not exceed 8g; and when seated anywhere in a trailer car, the velocity at which a 50th-percentile adult male contacts the seat back ahead of him shall not exceed 25 mph. A 50th-percentile adult male has been defined in § 238.5, based on the same characteristics for such a vehicle occupant's weight and dimensions specified in a NHTSA standard at 49 CFR § 571.208, S7.1.4. FRA does note that, for purposes of this requirement, the weight of the occupant is not particularly relevant, as weight generally should not affect how fast the occupant strikes the seat back ahead of him. In this regard, an occupant of heavier or lighter weight should be neither more nor less protected by the requirements of this paragraph.

In its comments on the NPRM, Simula did not recommend defining an occupant velocity in paragraph (d), noting that it is a function of the crash pulse, the distance between two rows of seats, as well as occupant position and size. FRA has specified that occupant velocity not exceed 25 mph in a secondary collision because an occupant travelling beyond that speed is at considerable risk of harm from a secondary impact. In fact, use of an occupant restraint system would likely have to be required to protect the train occupants in such a case. FRA believes that compliance with paragraph (d)(1) can be demonstrated, and that Amtrak's HTS complies with the rule based on information presented to FRA.

Simula additionally commented that if trailer cars are built to withstand 30 mph collisions and 10g decelerations, then the seats in these cars should also be designed to withstand these same forces. Specifically, Simula did not recommend requiring that the decelerations in trailer cars be limited in a 30 mph collision to 10g while requiring seats to withstand the impact of an occupant travelling at 25 mph and a longitudinal force of 8g, noting that the seats will not be able to withstand the 10g decelerations and consequently detach from the car.

FRA notes that Simula's comment relates to the seat strength requirements found in § 238.435. In the final rule, § 238.435(a) requires that the seat back and seat attachment in a passenger car be designed to withstand, with deflection but without total failure, the load associated with the impact into the

seat back of an unrestrained 95th-percentile adult male initially seated behind the seat back, when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds. FRA agrees with Simula that it is possible that a seat in a trailer car may detach from the car when subjected to a force that is greater than that required to be withstood under proposed § 238.435(a) in the NPRM, and expressly permitted by proposed § 238.403(d). FRA has, therefore, decided to modify § 238.403(d) so as to limit the permissible decelerations in a trailer car to 8g under the conditions specified in that paragraph. FRA believes that meeting this requirement is feasible with current technology, and that Amtrak's HTS complies with § 238.403(d)(2) on the basis of information presented to FRA.

In its comments on the NPRM, Talgo believed that paragraph (d) should make allowances for the short-lived elevations in peak that may occur during a collision so that peaks exceeding 10g (as proposed) for a duration no longer than 10 milliseconds are acceptable. FRA believes that for purposes of demonstrating compliance with this paragraph through testing, deceleration measurements may be processed through a low-pass filter having a bandwidth of 50 Hz.

Paragraph (e) contains the analysis process to demonstrate that equipment meets these crash energy management performance requirements. The process allows simplifying assumptions to be made so that computer modeling techniques can be used to confirm compliance.

Section 238.405 Longitudinal Static Compressive Strength

This section contains the requirements for longitudinal compressive strength of power cars and trailer cars. Paragraph (a) requires the compressive strength of the underframe of the power car cab to be a minimum of 2,100,000 pounds without yielding. To form an effective crash refuge, this strength is needed to take advantage of the strength of the power car's two end frames. Alternate design approaches that provide equivalent protection are allowed, but the equivalent protection must be demonstrated through analysis and testing and be approved by FRA under the provisions of § 238.21.

In its comments on paragraph (a), Bombardier believed that a design requirement based on the ultimate strength of the structure, as proposed in the NPRM, makes the analysis more difficult and testing the structure

impractical and potentially dangerous. According to Bombardier, the specified test load should be based on the yield strength of the structure rather than the ultimate strength, as this would also be consistent with the Amtrak high-speed trainset specifications. FRA has revised this section pursuant to Bombardier's comment. FRA notes that the effect of this revision is to require a stronger power car cab than originally proposed in the rule.

Bombardier additionally commented that clarifying text should be added to define the structural loading conditions so that the 2,100,000-pound load shall be resisted at the height of the underframe at the rear of the cab as follows: 300,000 pounds at each rear cab corner post location; and 750,000 pounds at each rear cab collision post location. FRA does not believe it necessary to incorporate Bombardier's comment into the rule, and doing so may result in confusion. As discussed in § 238.411, FRA believes that each corner post structure on the rear end of a power car cab must resist a 300,000-pound load at the structure's joint with the underframe, and each collision post structure must resist a 750,000-pound load in the same manner. These loads may not be resisted solely at the underframe as a test of the strength of the corner and collision post structures; otherwise, the actual ability of the collision and corner post structures to resist shearing would not be implicated. Further, the load testing criteria for corner and collision post structures in the rule is based on ultimate strength; whereas the longitudinal compressive strength requirement in this paragraph, as revised, is based on yield strength. In light of the separate requirements for testing corner and collision post structures, FRA believes it best not to expressly integrate those requirements with this section.

Paragraph (b) contains the requirements for the static compressive strength of the occupied volumes of trailer cars. This adopts the traditional North American design practice of a static strength of 800,000 pounds, without deformation of the underframe. Paragraph (c) makes clear that unoccupied volumes of power cars or trailer cars may have a static end strength of less than 800,000 pounds to accommodate crash energy management designs.

The crash energy management design requirement ensures that the stronger end structures and the stronger static compressive strength of the cab of a power car will not make Tier II passenger equipment incompatible with existing passenger equipment should a

collision between the two different types of equipment occur. The crash energy management design causes a Tier II passenger train to appear as a softer collision surface to a conventionally designed train, owing to the collision energy absorbed by the Tier II train as its unoccupied volumes intentionally crush.

Section 238.407 Anti-Climbing Mechanism

This section contains the requirements for anti-climbing mechanisms on power and trailer cars. Paragraph (a) requires a power car to have a forward anti-climbing mechanism capable of resisting an upward or downward static vertical force of 200,000 pounds, without exceeding the ultimate strength of the material. This requirement is virtually identical to that required of locomotives by AAR S-580. However, designs are permitted that require the crash energy management controlled crushing to occur prior to the anti-climber fully engaging. FRA has revised this paragraph based on a comment from Bombardier that the rule text, as proposed, did not indicate that the 200,000-pound value is an ultimate load. Inasmuch as this requirement as stated in AAR S-580 is in fact based on an ultimate load acceptance criterion, FRA has modified the rule text accordingly.

Paragraph (b) requires that interior train coupling points between units, including between units of articulated cars or other permanently joined units of cars, have an anti-climbing device capable of resisting an upward or downward vertical force of 100,000 pounds without yielding. This is consistent with current design practice. FRA has revised this section based on a comment from Bombardier that the requirements in paragraph (b) are based on 49 CFR § 229.141(a)(2), and should thus include a yield strength acceptance criterion. FRA has modified the rule consistent with the requirements of 49 CFR § 229.141(a)(2).

Paragraph (c) requires the forward coupler of a power car to resist a vertical downward force of 100,000 pounds for any horizontal position of the coupler without yielding, and is virtually identical to that provided in 49 CFR § 229.141(a) for MU locomotives built new after April 1, 1956, and operated in trains having a total empty weight of 600,000 pounds or more.

Talgo commented on both this section and its Tier I counterpart in § 238.205. Talgo explained that it desired to avoid the implication that only couplers may properly function as anti-climbing

mechanisms. Talgo also believed that in measuring the strength of the anti-climbing device, the operative variable should be vertical acceleration, expressed in gs, rather than load, expressed in pounds, to accommodate trains of different masses. FRA has discussed these comments earlier in the preamble.

Section 238.409 Forward End Structures of Power Car Cabs.

This section contains the requirements for forward end structures of power car cabs. The forward end structure of a power car cab is vital 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. The requirements in paragraphs (a)–(c) are based on a specific end structure design that consists of a full-height center collision post, two side collision posts located at approximately the one-third points laterally, and two full-height corner posts. This section also includes loading requirements that each of these structural members must withstand. However, the rule does permit flexibility for using other equipment designs that provide equivalent structural protection.

End structures meeting these requirements will provide considerably greater protection to the train operator than that provided by existing passenger equipment designs. For example, much stronger corner posts are required here than for Tier I passenger equipment. FRA believes these end structures help provide a degree of crashworthiness to compensate for the increased risk associated with operating at higher speeds.

The front end structure design also includes in paragraph (d) a skin requirement equivalent to that required by AAR S-580 and contained in § 238.209 for Tier I locomotives. FRA has revised paragraphs (a)(3) and (b)(2) based on a comment from Bombardier. Bombardier noted that the acceptance criterion proposed by FRA in these paragraphs is based on the yield or critical buckling stress; whereas the design of the forward end structures of the Amtrak high-speed power car cab is based on an ultimate load. FRA agrees that basing the acceptance criterion on ultimate strength is consistent with the Amtrak high-speed trainset design specification, and FRA has modified the rule in this regard.

Bombardier also commented that in paragraph (c)(2) FRA proposed requiring the corner post to resist a horizontal, lateral force of 100,000 pounds applied

at a point 30 inches up from the underframe. Bombardier stated that the cab on the Amtrak high-speed trainset was designed to resist the 100,000-pound load at a point 18 inches up from the underframe, and believed this consistent with all current design practices for car end structural members. FRA has not modified the rule on this point. FRA has found no conflict between the proposal and the Amtrak high-speed trainset specification.

Both Bombardier and Talgo commented that FRA appeared to have specified the wrong value in paragraph (c)(3) of the proposed rule, as compared with the values contained in Figure 1. See 62 FR 49812–3. The commenters are correct that, as proposed, the paragraph wrongly required each forward corner post to resist a horizontal, longitudinal or lateral shear load of 150,000 pounds. As Figure 1 demonstrates, FRA intended each corner post to resist a horizontal, longitudinal or lateral shear load of 80,000 pounds. FRA has revised paragraph (c)(3) accordingly in the final rule.

Talgo additionally commented that in paragraph (d)(1), although the rule makes clear that its reference to a particular thickness of material does not preclude the use of thinner materials having a higher yield strength, it would be preferable to avoid specifying a thickness altogether. Instead, Talgo suggested that the skin strength requirement could be stated in terms of a specified impact resistance, as FRA proposed in § 238.421 on safety glazing. FRA recognizes that it may be possible to specify an impact resistance requirement, yet FRA has chosen a yield strength requirement based on AAR Standard No. 580 and the collective judgment of the railroad industry behind that standard. Accordingly, although FRA would not preclude an equipment design based on impact resistance that provides equivalent safety, FRA will defer consideration of specifying such an impact resistance until Phase II of the rulemaking. FRA does note that the strength of the material, in terms of its resistance to shear, is also important to ensure occupant protection.

Section 238.411 Rear end Structures of Power Car Cabs.

The rear end structure of a power car cab provides protection to crewmembers from intrusion of locomotive machinery or trailing cars into the cab's occupied volume as a result of a collision or derailment. The requirements in this section are based on a specific end structure design that consists of two full-height corner posts (paragraph (a)

and two full-height collision posts (paragraph (b)). In addition, this section specifies loading requirements that each of these structural members must withstand. Of course, the rule does permit flexibility for using other equipment designs that provide equivalent structural protection.

The required rear end structural protection will provide considerably greater protection to the train operator than that provided by existing passenger equipment designs. Together, the front and rear end structural protection required in this rule for a power car cab make the cab a highly survivable crash refuge.

In commenting on the NPRM, Bombardier recommended that in paragraph (b) the 750,000-pound force at the rear end cab structure collision posts be applied at the height of the centerline of the underframe, and not at the collision posts' joint with the underframe. FRA disagrees, and believes it necessary to test the strength of the collision post structure at its joint with the underframe to demonstrate the actual ability of the collision post structure to resist shearing. Otherwise, if the strength of the collision post structure were tested at the height of the centerline of the underframe, the collision post connection would not be loaded and the ability of the collision post structure to resist shearing would not be tested.

Bombardier also suggested that the horizontal, shear load value of 750,000 pounds specified in paragraph (b)(1) that the collision post is required to resist be changed to 500,000 pounds. Bombardier believed this modification necessary to be consistent with the shear strength requirements for the front collision posts specified both in the rule as well as in the Amtrak high-speed trainset specifications. FRA disagrees with this comment, and has not revised the rule on this point. The 750,000 pounds that each of the two collision posts at the rear of a power car cab must individually resist—1,500,000 pounds in the aggregate—is consistent with the 500,000 pounds that each of the three collision posts at the forward end of the power car cab must individually resist—again 1,500,000 pounds in the aggregate—under § 238.409(a) and (b) of this rule. Further, FRA believes these values to be consistent with the Amtrak high-speed trainset design specification.

Section 238.413 End Structures of Trailer Cars

The requirements in paragraph (a) are based on a specific end structure design that consists of two full-height corner posts and two full-height collision

posts. The requirements include loading requirements that each of these structural members must withstand. The rule allows flexibility for other designs that provide protection structurally equivalent to the specified design.

Paragraph (b) in the final rule contains an additional requirement for trailer cars designed with an end vestibule. Such designs provide an opportunity for additional corner post structures inboard of the vestibule side doors. These corner posts can be supported by the side sill and therefore be structurally more substantial than the corner posts ahead of the side doors. This paragraph includes loading requirements that these additional full-height corner posts must withstand. Overall, the double corner post design provides significantly increased protection to passengers in trailer cars with end vestibules.

In its comments on the rule, Bombardier stated that, to be consistent with the design requirements for Amtrak's high speed trainsets, the corner post loads in paragraphs (a)(1)(ii), (b)(2), and (b)(3) (as numbered in the final rule) should be applied at 18 inches up from the underframe, rather than at 30 inches. FRA agrees that these values are consistent with Amtrak's previous undertakings for the high-speed trainsets, and has modified the final rule accordingly.

In the 1997 NPRM, FRA proposed an exception from the requirements of paragraph (a) for a trailer car (or, more appropriately, a consist of trailer cars) made up of multiple articulated units not designed for uncoupling other than in a maintenance shop. See 62 FR 49814, proposed § 238.413(b). FRA proposed that the end structure requirements in paragraph (a) apply only to the two ends of the entire articulated assembly (or consist) of units, and that the interior ends of the individual units of the articulated assembly need not be equipped with an end structure meeting the requirements in paragraph (a). Articulated assemblies have a history of remaining in line during derailments and collisions and, if not designed to be uncoupled, only the outside ends of the entire assembly should be exposed to the risks of override. (In this regard, FRA should have only proposed an exception for such equipment from the collision post requirements in paragraph (a) and not from the corner post requirements as well since collision posts—not corner posts—principally protect against override and telescoping of passenger equipment. Corner posts, by their very definition and location, protect against hazards along the railroad right-of-way

in a way that collision posts cannot.) However, none of the relevant recent experience is on the North American continent, and the ability of articulated connections to remain intact during a high-speed collision with North American passenger equipment, freight rolling stock, or a fixed obstruction has not been demonstrated analytically. FRA noted the weakness in the proposed exception (§ 238.413(b) of the NPRM) while preparing the final rule. FRA has deleted proposed paragraph (b) in its entirety, and has not provided an exception due to the high operating speeds of Tier II passenger equipment.

Section 238.415 Rollover Strength

This section contains the requirements for the rollover strength of passenger cars and power cars. If the occupied volumes of these vehicles remain intact when they roll onto their side or roof structures, occupant injury from vehicle collapse will be avoided. This section essentially requires the vehicle structure to support twice the deadweight of the vehicle as it rests on its side or roof. Passenger equipment constructed to North American design practice performs well in rollover situations. FRA believes this requirement captures this industry practice.

FRA has revised paragraph (a) to make clear that its requirements apply to passenger cars. This revision is consistent with the section-by-section analysis of proposed § 238.415 in the NPRM, see 62 FR 49779, which explained that this section included rollover strength requirements for both power cars and trailer cars. (The term trailer car is in fact a more inclusive definition under the rule than the term passenger car.) FRA has also made clear in paragraph (a) that minor localized deformations to the outer side skin of the passenger car or power car are allowed provided such deformations in no way intrude upon the occupied volume of each car. As in the NPRM, paragraph (b) states that deformation to the roof sheathing and framing is allowed to the extent necessary for the vehicle to be supported directly on the top chords of the side frames and end frames.

As Bombardier suggested in its comments on the NPRM, FRA has also made a minor clarification to this section by substituting the words "in the structural members of the" in place of the word "for" in the phrase which originally read in the NPRM, "the allowable stress for occupied volumes * * *." See 62 FR 49816.

Section 238.417 Side Loads

This section contains the requirements intended to resist penetration of the side structure of a passenger car by a highway or rail vehicle. The objective is to make the side of the passenger car strong enough so that the car derails rather than collapses when struck in the side by a highway or rail vehicle. If the passenger car can move sideways (derail), less structural damage and potential to injure train occupants will result.

In its comments on the NPRM, Bombardier stated that for practical reasons and to be consistent with the Amtrak high-speed trainset design specifications, local yielding of the side sill should be allowed in calculating the allowable stress in paragraph (c). FRA agrees that local yielding of the side skin adjacent to the side sill and belt rail, and local yielding of the side sill bend radii at the crossbearer and floor-beam connections is permissible. FRA has modified paragraph (c) accordingly, and notes that such local yielding is permissible provided the resulting deformations do not intrude upon the occupied volume of the passenger car.

Section 238.419 Truck-to-Car-Body and Truck Component Attachment

Paragraph (a) requires the truck-to-car-body attachment on Tier II passenger equipment to resist without failure a minimum vertical force equivalent to 2g acting on the mass of the truck and a minimum force of 250,000 pounds acting in any horizontal direction on the truck. The intent of the requirement to resist without failure the minimum vertical force equivalent to 2g acting on the mass of the truck is to prevent the truck from separating from the car body during a rollover. The intent of the requirement to resist without failure the minimum force of 250,000 pounds acting in any horizontal direction on the truck is to resist the forces that act upon the truck during a collision or derailment that would tend to shear the truck from the car body. If the truck separates from the car body it may become a hazardous projectile that will intrude upon the occupied volume of a passenger car or locomotive. Further, the truck will not be able to serve, in effect, as an anti-climbing device if it separates from the car body in a collision or derailment.

Paragraph (b) requires that each component of the truck must 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. Whereas paragraph (a) is intended to keep the

truck attached to the car body, paragraph (b) is intended to keep truck components attached to the truck.

Bombardier, in its comments on the NPRM, requested that FRA modify paragraph (a) so that the truck-to-car-body attachment must resist the specified vertical and horizontal forces only as individual loads applied separately. However, FRA has retained the requirement that the truck-to-car-body attachment resist the specified vertical and horizontal forces as applied at the same time. Requiring the truck-to-car-body attachment to resist the vertical and horizontal forces applied at the same time reflects actual conditions experienced during a collision or derailment. For this reason, FRA believes it inappropriate to adopt Bombardier's comment.

Section 238.421 Glazing

This section contains the glazing requirements for Tier II passenger equipment. FRA believes that the higher speed of Tier II passenger equipment necessitates more stringent glazing standards than currently required by 49 CFR part 223. As a result, FRA proposed specific standards for end-facing exterior glazing, side-facing exterior glazing, and interior glazing (which is not addressed in part 223) on windows installed in Tier II passenger equipment. See 62 FR 49817. In response to the NPRM, however, FRA received a number of comments questioning the appropriateness of FRA's proposals, as well as the existing glazing standards in part 223. Having considered these comments, FRA has decided to focus the final rule principally on more stringent glazing requirements for end-facing exterior windows installed in Tier II passenger equipment. In the second phase of this rulemaking, FRA will reexamine the glazing requirements for all windows installed in Tier II passenger equipment. FRA notes that this final rule does not amend the requirements of 49 CFR part 223, although FRA had proposed to amend the application section of that part in the NPRM. See 62 FR 49791. Such an amendment is no longer appropriate in light of the requirements of this section (§ 238.421) in the final rule. The requirements of this section and the modifications from the proposed rule are discussed below in detail.

The requirements of paragraph (a) apply to all exterior windows on power car cabs and passenger cars. Windows on such equipment are required to meet the glazing standards contained in 49 CFR part 223, except as provided in paragraphs (b) and (c) of this section. Part 223 contains requirements for both

end-facing and side-facing window glazing, and employs different testing methods than specified in this section. As recommended by Bombardier in its comments on the NPRM, instead of applying the glazing requirements in this section generally to power cars as proposed in the NPRM, FRA has decided to limit the application of the glazing requirements in this section to power car cabs. This modification is consistent with the glazing requirements in part 223, see, e.g., 49 CFR § 223.9(a). Bombardier had noted that one of the side windows on the Amtrak high-speed power cars will lead to an equipment room, which FRA understands will not be occupied while the power car is in service.

Paragraph (a) relates to paragraph (b) in that paragraph (b) contains additional requirements for end-facing exterior window glazing on power car cabs and passenger cars. First, under paragraph (b)(1), end-facing exterior window glazing shall resist the impact of a 12-pound solid steel sphere traveling at the maximum speed of the vehicle in which the glazing will be installed. The test must be conducted so that the sphere strikes the window glazing at an angle of 90 degrees (perpendicular) to the window surface. To successfully pass the test, the window must neither spall nor be penetrated by the sphere. This test is similar to the requirements imposed under European glazing standards for high-speed trains, and should be much more repeatable than the cinder block test specified in 49 CFR part 223.

In the NPRM, FRA had proposed that end-facing exterior windows resist an impact with a 12-pound steel sphere at an angle equal to the angle between the window glazing surface as installed and the direction of travel of the train. See 62 FR 49817. In commenting on the NPRM, Automotive Glass Engineering (Automotive Glass) explained that impact angle depends upon variables such as the vector of the projectile, the vector of the train, and the angle at which the subject glazing is installed. Automotive Glass then observed that it would have no advance knowledge of the angle at which an object would strike the window glazing when installed in the train. Automotive Glass recommended that the rule require that tests be conducted at an angle perpendicular to the surface—noting this would constitute the most severe impact—unless the rule specifies the method for determining the angle of incidence. FRA has adopted the comment of Automotive Glass by revising the rule text to require that the window glazing resist the impact with

the 12-pound steel sphere at an angle 90 degrees to the window surface. This should result in a requirement as strict or stricter than that proposed in the NPRM.

Under paragraph (b)(1), end-facing exterior window glazing shall demonstrate anti-spalling performance by the use of a 0.001 aluminum witness plate, placed 12 inches from the glazing surface during all impact tests. The witness plate must not contain any marks from spalled window glazing particles after any impact test. This requirement was originally proposed as § 238.421(a)(3)(ii) in the NPRM. When impacted on the exterior surface, window glazing currently used in railroad equipment tends to spall from the inside surface. Several eye injuries to crewmembers have resulted. FRA believes that the witness plates used in conducting the spalling tests to qualify current glazing are too thick and have allowed glazing that actually spalled to pass the test. The witness plate specified in this paragraph is much thinner and, therefore, more sensitive to detecting spall.

In commenting on the NPRM, Automotive Glass stated that the performance of a witness plate is critically dependent on the amount of tension in which it is held, and that a uniform tension procedure would enhance consistency. Automotive Glass therefore recommended that the test protocol specify the minimum tension of the foil in terms of some unit of measure, other than "taut," which it considered an aspiration not a specification. FRA notes that in testing required under 49 CFR part 223, the witness plate must have a "taut" surface. See 49 CFR part 223, Appendix A, b.(6). In the NPRM, proposed § 238.421(a)(3)(ii) is silent as to the tension of the witness plate. As "taut" has been the witness plate tension specification used in all safety glazing testing required by FRA, use of a "taut" witness plate is not inconsistent with the requirements of this section. FRA believes that this issue may be reexamined in the second phase of the rulemaking.

Automotive Glass also commented that total elimination of spalling will result in additional weight, additional cost, loss of durability, or some combination of these three. According to Automotive Glass, unessential weight above the center of gravity is detrimental because high-speed trains should have less inertia and a lower center of gravity. Automotive Glass believed FRA could sacrifice too much by averting the slight hazard created by the possibility of minor spalling in an

extremely unlikely event. Under the final rule, of course, only end-facing exterior glazing on Tier II passenger equipment is subject to the particular requirements of this paragraph. Side-facing exterior glazing is subject to the requirements contained in 49 CFR part 223. As a result, only a relatively small number of the windows on a Tier II passenger train will be required to comply with the more stringent requirements specified in this paragraph. In this regard, FRA believes that the changes made to the final rule render these comments less significant.

Automotive Glass further commented that under the proposed rule no spalling of glass is allowed, and noted that under 49 CFR part 223 spalling is permitted unless it is severe enough to penetrate the prescribed foil witness plate. Additionally, Automotive Glass stated that constructing foil witness plates requires great care to avoid creating indentations in the foil, and that microscopic examination of the surface could be required to locate indentations to determine whether they were preexisting or produced by spall. To the extent no spalling is allowed, Automotive Glass suggested replacing the witness plate with a capture box that would capture glass fragments in the box. Automotive Glass believed that use of a capture box would result in a simpler and more reliable determination whether spalling occurred. In addition, if the rule would permit minor spalling, Automotive Glass recommended use of a thinner witness plate positioned closer to the glazing material to reduce the severity of allowable spalling and permit determination based on penetration instead of indentation.

FRA desires that no spalling occur, however, and recognizes that the specified requirement is stricter than that provided in part 223. Further, FRA believes that use of a capture box is not necessarily a superior method of testing for spalling, as the integrity of the test results depend in large part on the attentiveness of the operator examining the capture box for spalled glass. FRA notes that Automotive Glass also provided several other comments regarding the testing protocols specified in this section and 49 CFR part 223. To the extent that these comments address testing protocols in part 223, they concern issues affecting glazing tests for both freight and passenger equipment. Such issues need to be addressed in a broader regulatory forum than this final rule on passenger equipment safety. FRA does make clear, nevertheless, in response to a comment from Automotive Glass, that it is not proper to certify that a segment of window

glazing meets the requirements of this section or part 223, or both, unless that window segment is composed of the same material and manufactured in the same manner as the window segment that underwent the testing required by this section or part 223, or both.

Paragraph (c) contains an alternative to the glazing standards specified in paragraphs (a) and (b). The alternative standards specified in paragraph (c) represent proposed " §§ 238.421(a) and (b) in the NPRM. FRA has included this paragraph in the final rule in recognition that the safety glazing standards proposed in § 238.421 were developed in consultation with Amtrak for use on Amtrak's HTS, and FRA believed these standards would provide sufficient protection for the safety of the train occupants. However, the option to use the alternative standards in paragraph (c) only applies to exterior window glazing in passenger equipment ordered prior to May 12, 1999. Further, the option to comply with paragraph (c) is no longer available once the window needs to be replaced and the railroad has exhausted its inventory of glazed windows conforming to the requirements of paragraph (c) as held prior to May 12, 1999. In this manner, exterior window glazing complying with the requirements in this paragraph will be phased out over time.

Paragraph (d) is similar to § 238.221(b) in this final rule. FRA did not receive any specific comments on this section and, for clarity, FRA has restated the requirements proposed in §§ 238.421(c) and (d) in the NPRM, see 62 FR 49817, as § 238.421(d) in this final rule. The focus of paragraph (d) in the final rule is clearly on the ability of each exterior window to remain in place, however the window may be secured, and not have the window become a potential projectile itself. FRA notes that it is separately evaluating whether securement of window glazing in existing passenger equipment is sufficient to withstand pressure differences associated with passing high-speed trains.

Paragraph (e) is a stenciling requirement which FRA has revised in this final rule as proposed originally in § 238.421(f).

As noted, FRA has decided not to impose on all Tier II passenger equipment in this final rule the particular requirements for side-facing exterior window glazing on Tier II passenger equipment which FRA had proposed in the NPRM. Instead, Tier II power car cabs and passenger cars must comply with the existing side-facing exterior window glazing requirements specified in 49 CFR part 223, or comply

with the alternative standards specified in paragraph (c), as appropriate. However, FRA has included the following comments received on the proposed side-facing exterior window glazing standards for purposes of advancing the discussion of these standards in the second phase of the rulemaking.

FRA had generally proposed requiring that side-facing exterior window glazing in Tier II passenger equipment resist the impact of a 12-pound solid steel sphere traveling at 15 mph and impacting at an angle of 90 degrees to the surface of the glazing, with no penetration or spall. See proposed § 238.421(a)(2)(i), 62 FR 49817. FRA intended this test to be more stringent than the large object impact test required for side-facing exterior glazing under 49 CFR part 223, and to demonstrate whether the side-facing glazing can protect occupants from a relatively heavy object thrown against the side of the train. In response to this proposal, GE Plastics (of the General Electrical Company) commented that, although the energy resulting from the proposed test would be greater than that required under part 223, the momentum produced would not be greater. Noting that tests have shown momentum to be as significant a factor as energy in the consequences of an impact, GE Plastics did not believe the proposed test could be considered more stringent than the current requirement in 49 CFR part 223. Instead of FRA's proposed test, GE Plastics recommended a test involving a steel sphere weighing 24 to 25 pounds travelling at 15 mph, so that energy and momentum would be greater than the current requirement.

FRA had also proposed generally requiring that side-facing exterior window glazing in all Tier II passenger equipment resist the impact of a granite ballast stone weighing a minimum of 0.5 pounds, traveling at 75 mph, at a 90-degree angle to the glazing surface, with no penetration or spall. See proposed § 238.421(a)(2)(ii). FRA intended this test to demonstrate whether the glazing could protect occupants against impact from a common stone found along the railroad thrown at a speed slightly faster than a human could throw such an object. In response, Automotive Glass commented that, because ballast stones are irregular geometrically and structurally, reproducible tests would not be possible unless the granite spheres used in the tests were machined and polished. Second, Automotive Glass stated that the proposed test would not impose a significantly higher kinetic energy load than that imposed by the

test involving a 12-pound steel sphere impacting the glazing surface at 15 mph, and also it would not have greater spall generation potential than the proposed test involving a 9 mm bullet.

Automotive Glass added that, if a higher kinetic energy test is desired, it would be more reasonable to increase the impact velocity of the proposed test involving the 12-pound steel sphere to at least 16 mph.

FRA has also decided to defer imposing a new requirement for ballistic testing of exterior window glazing on all power car cabs and passenger cars. In the NPRM, FRA proposed requiring that all exterior glazing resist the single impact of a 9-mm, 147-grain bullet traveling at an impact velocity of 900 feet per second, with no bullet penetration or spall. See proposed § 238.421(a)(3)(i). FRA noted that this bullet is a much more common handgun round than the .22-caliber bullet specified in 49 CFR part 223. In response to the proposal, GE Plastics commented that it had seen no data indicating that people shoot at trains more frequently with 9 mm bullets, although it agreed that a 9 mm bullet is a more common handgun round than a .22 caliber bullet. Further, GE Plastics questioned why a 147 grain bullet was specified, noted that a bullet's shape and composition affect its penetrating ability, and believed that more detail is needed to determine which bullet is appropriate. Moreover, GE Plastics expressed concern about the wording of the proposed test in that it believed a bullet will rarely be travelling exactly at 900 feet per second during testing. GE Plastics recommended specifying a minimum and a maximum velocity, instead, as well as examining the wording of existing ballistic test standards.

In commenting on the proposal, Automotive Glass noted its belief that the .22 caliber projectile specified in 49 CFR part 223 represents the threat of accidental injury from young people hunting or "plinking" along a railroad right-of-way, while the proposed 9 mm projectile represents the threat of injury intentionally inflicted by vandals or terrorists. Automotive Glass believed that if FRA were to adopt a policy of requiring any level of protection against intentionally inflicted injury, it would seem to constitute a departure from previous policy. If FRA were to adopt this approach, then Automotive Glass recommended that the proposed test protocol require each subject glazing specimen to withstand three 9 mm bullets within a circle eight inches in diameter, as vandals or terrorists are more likely to fire short bursts. Further,

Automotive Glass observed that any level of ballistic resistance required of glazing which exceeds that provided by the body panel construction below the glazing would contribute only to a false sense of security. In the end, Automotive Glass suggested that individual railroads be given the discretion whether to utilize glazing with greater ballistic resistance based on the threat and severity of vandalism or terrorism each faces. Again, FRA has decided to defer until the second phase of the rulemaking consideration of imposing a new requirement for ballistic testing on all exterior window glazing used on power car cabs and passenger cars. Of course, a railroad may avail itself of the alternative requirements specified in paragraph (c) at its option, to the extent paragraph (c) is applicable.

The final rule does not contain a standard covering interior window glazing, as FRA has decided to defer consideration of imposing such a standard until the second phase of this rulemaking. In the NPRM, FRA had proposed requiring that interior glazing 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. See 62 FR 49817. (Bombardier commented that it believed the latest revision to this standard occurred in 1990 rather than 1966.) FRA intended that the proposed requirement would alleviate the need for interior window glazing to meet the stringent impact resistance requirements placed on exterior glazing, while ensuring that the glazing will shatter in a safe manner like automotive glazing. In response to this proposal, GE Plastics commented that requiring the glass to meet the AS1 requirements would exclude recognized safety glazing materials for reasons unrelated to the glazing's ability to break safely, such as light transmission, light distortion, and abrasion resistance. GE plastics further commented that specifying a requirement for laminated glass would exclude many established safety glazing materials. GE Plastics recommended that, if safety glazing is desired, FRA incorporate instead the 1984 version of the ANSI Z97.1 safety glazing standard for use in buildings, which defines safety glazing as "Glazing materials so constructed, treated, or combined with other materials that, if broken by human contact, the likelihood of cutting and piercing injuries that might result from such contact is minimized."

AtoHaas Americas, Inc., (AtoHaas) similarly commented that the AS1

standard incorporated in FRA's interior glazing proposal is an external glazing standard that contains requirements which may not be needed for internal glazing, such as light stability, luminous transmittance, and abrasion resistance. Likewise, AtoHaas commented that specifying a requirement for laminated glass would exclude other materials able to meet the safety needs here for internal glazing. AtoHaas noted that there are many types of glazing that would shatter or break in a safe manner, and urged FRA to examine the American National Standard for Safety Glazing Used in Buildings for products meeting FRA's safety needs. FRA will consider these recommendations with the Working Group in the second phase of the rulemaking, and presents them here to advance discussion on potential requirements for interior window glazing in Tier II passenger equipment.

Section 238.423 Fuel Tanks

This section contains the requirements for fuel tanks for fossil-fueled Tier II passenger equipment. This section should be read with the discussion of locomotive fuel tanks in the preamble. This section contains separate requirements for external fuel tanks, which extend outside the car body structure, and for internal tanks, which do not extend outside the car body.

In commenting on the proposed rule, Bombardier recommended that the same requirements proposed for Tier I fuel tanks apply to Tier II equipment as well. Bombardier stated that early consensus was reached to do so in the Tier II working group during development of the NPRM. Bombardier maintained that this consensus was based on the fact that there are no fuel tanks on the electric trainsets being built for the NEC; the maximum speed for a fossil-fueled version of the trainsets would be 125 mph; and no data exists to support the need for different fuel tank requirements for Tier I and Tier II equipment. Further, Bombardier stated that the requirements for Tier I fuel tanks incorporate the most current industry practices for diesel electric locomotive fuel tanks.

In response to Bombardier's comment, FRA believes that different fuel tank requirements for Tier I and Tier II equipment may be appropriate based on the different maximum speeds at which the equipment can travel. However, FRA recognizes that the specific differences between the proposed Tier I and Tier II fuel tank requirements have not been tightly justified. Accordingly, the final rule requires compliance with Tier I requirements for internal fuel tanks, and includes a requirement for

FRA review and approval of any Tier II external fuel tank for safety equivalence with Tier I performance.

As Bombardier pointed out in its comments, the NPRM did contain a technical mistake in proposed § 238.223(b)(2), which had as its Tier II counterpart proposed § 238.423(b)(3). Accordingly, these paragraphs have been corrected in the final rule to reflect that the 25,000-lb yield strength described in the proposals is in fact a 25,000-lb per-square-inch yield strength.

Section 238.425 Electrical System.

FRA did not receive any specific comments on this section, and it is adopted as proposed. This section contains the requirements for the electrical system design of Tier II passenger equipment. 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;
- Design of resistor grids that dissipate energy produced by dynamic braking with sufficient electrical isolation and ventilation to minimize the risk of fires; and
- Electromagnetic compatibility within the intended operating environment to prevent electromagnetic interference with safety-critical equipment systems and to prevent interference of the rolling stock with other systems along the right-of-way.

Section 238.427 Suspension System

In response to comments on the 1997 NPRM and for purposes of clarification, FRA has revised the requirements of this section. Changes from the NPRM are noted below in the general discussion of this section.

As explained in the NPRM, safety requirements concerning the wheel-rail interface have traditionally been addressed as part of the track safety standards. In parallel with the Tier II Equipment Subgroup's effort to develop high-speed equipment safety standards, the RSAC Track Working Group developed a final rule on track safety standards which includes high-speed track standards. See 63 FR 33992, June 22, 1998. In October 1996, FRA sponsored a joint meeting of the Tier II Equipment Subgroup and members of the Track Working Group focusing on

the development of high-speed track standards to ensure that the two sets of standards not conflict at the wheel-rail interface, where they overlap. FRA did receive a comment on the passenger equipment NPRM that the two sets of standards do in fact conflict, and this comment is addressed in particular in the discussion of Appendix C to this part (Suspension System Safety Performance Standards).

To ensure safe, stable performance and ride quality, paragraph (a) requires suspension systems to be designed to reasonably prevent wheel climb, wheel unloading, rail rollover, rail shift, and a vehicle 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 track conditions consistent with the Track Safety Standards (49 CFR part 213), 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 as exemplified by incidents where stiff, high-speed suspension systems caused passenger equipment to derail while negotiating curves in yards at low speeds.

Compliance with paragraph (a) must be demonstrated during pre-revenue service acceptance testing of the equipment and by complying with the safety performance standards for suspension systems contained in Appendix C to this part. Because better ways to demonstrate suspension system safety performance may be developed in the future, the rule allows the use of alternative standards to those contained in Appendix C if they provide at least equivalent safety and are approved by the FRA Associate Administrator for Safety under the provisions of § 238.21.

Paragraph (b) 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.

Paragraph (c) requires each truck to be equipped with a permanently installed lateral accelerometer mounted on the truck frame. If hunting oscillations are detected, the train must be slowed. FRA has revised this section to specify that hunting oscillations are considered 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 its comments on the rule, Talgo had recommended that the permissible limits of hunting oscillations be specified in the rule text and not in the definitions section, § 238.5, as proposed in the NPRM. See definition of *hunting oscillations* in proposed § 238.5, 62 FR 49793. FRA has adopted Talgo's suggestion for clarity. However, FRA has not adopted Talgo's alternative specification. Talgo commented that, using the formulation in the NPRM in defining hunting oscillations for Tier II passenger equipment, lateral oscillations should apply on a peak basis, rather than on a peak-to-peak basis. Talgo explained that oscillations would be considered dangerous if the amplitude of six consecutive peaks exceeded 0.8g. Talgo added that this approach is followed in Europe, citing UIC-515, and believed it more reasonable than the proposed formulation. FRA has revised the definition of hunting oscillations to make it consistent with the definition of truck hunting in 49 CFR § 213.333, Note 4 to the table of Vehicle/Track Interaction Safety Limits. FRA determined that the approach using the root mean square (mean-removed) was the preferred indicator of the forces associated with truck hunting, and takes into consideration the oscillatory nature of truck hunting. FRA believes this definition of truck hunting removes the uncertainty in counting the number of sustained oscillations.

FRA has further revised the rule to specify that the accelerometer measurements shall be processed through a filter having a band pass of 0.5 to 10 Hz. Talgo also commented the rule should state that in measuring the amplitude of lateral oscillations, the signal should be filtered with a band pass of 4 to 8 Hz so that irrelevant signals are excluded. FRA has adopted Talgo's recommendation in general, yet has specified a pass band consistent with the track safety standards. See 49 CFR § 213.333, Note 3 to table of Vehicle/Track Interaction Safety Limits.

Paragraph (d) provides ride vibration (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. In commenting on the NPRM, Bombardier noted that the values proposed in this paragraph were not fully consistent with the values found in the then-proposed track safety standards, and requested that they be

made consistent. FRA has revised the requirements of this paragraph accordingly. For clarity, as used in paragraph (d)(1)(iii), the formula $(a_L^2 + a_V^2)$ can be restated as the sum of the square of both accelerations.

FRA has combined paragraph (e) of proposed § 238.427 into paragraph (d) of the final rule as paragraph (d)(2). This provision requires that compliance with the requirements of this paragraph be demonstrated during the equipment's pre-revenue service qualification tests required under § 238.111 and § 213.345 of the federal track safety standards. One of the most important objectives of pre-revenue service qualification testing is to demonstrate that suspension system performance requirements have been met. FRA makes clear that the requirements of paragraph (d)(2) need only be shown during pre-revenue service qualification testing of the equipment.

FRA has added paragraph (d)(3) to make clear that, for purposes of paragraph (d), acceleration measurements shall be processed through a filter having a band pass of 0.5 to 10 Hz. In its comments on the NPRM, Talgo observed that the signal filter to use in performing the limit calculations had not been specified in this paragraph, and suggested using a band pass filter of 0.4 to 10 Hz. FRA has effectively adopted Talgo's comment.

Paragraph (e) requires wheelset journal bearing overheat sensors to be provided either on board the equipment or at reasonable intervals along the railroad's right-of-way. FRA prefers sensors to be on board the equipment to eliminate the risk of a hotbox that develops between wayside locations. However, FRA does recognize that onboard sensors have a history of falsely detecting overheat conditions, causing significant operating difficulties for some passenger railroads.

FRA has clarified paragraph (e) based on a comment from Bombardier that this provision should apply to each wheelset journal bearing, and not to each equipment bearing as stated in § 238.427(f), see 62 FR 49818. This is in accord with FRA's original intent.

Section 238.429 Safety Appliances

This section contains the requirements for safety appliances for Tier II passenger equipment. FRA has attempted to simplify and clarify how the Safety Appliance Standards contained in 49 CFR part 231 and 49 U.S.C. 20302(a) will be applied to Tier II passenger equipment. The requirements contained in this section are basically a restatement of existing requirements but tailored specifically

for application to this new and somewhat unconventional equipment. They represent the consensus recommendation of the Tier II Equipment Subgroup.

This final rule has retained all of the requirements proposed in the 1997 NPRM. The only modification to the safety appliance requirements is in response to one commenter's recommendation that the requirements related to sill steps be made more consistent with existing regulations. As a result, the requirement contained in paragraph (e)(7), regarding the maximum height of the lowest sill step tread, has been changed to be consistent with existing regulations and practice.

This same commenter also recommended that a specific grade of steel be designated in the requirements for the steel or other materials used for handrails, handholds, and sill steps, and that the grade of SAE (Society of Automotive Engineers) bolt to be used as mechanical fasteners be specified as well. FRA believes that steel or other materials used for handrails, handholds, and sill steps should at least be equivalent to specification ASTM A-576, Grade 1015-1020 steel. However, to the extent this need be specified as a requirement, FRA believes it would be more appropriate to consider doing so for safety appliances on all passenger equipment—not just Tier II passenger equipment. FRA had not made such a proposal in the NPRM; and this issue may be reexamined in Phase II of the rulemaking. As for the strength of mechanical fasteners, the final rule states that mechanical fasteners must have a mechanical strength at least equivalent to that of a 1/2 inch diameter SAE grade steel bolt, as FRA had proposed in the NPRM. FRA believes that any SAE grade of steel bolt will satisfy this requirement, and, as a result, FRA has not modified the final rule in this regard.

Paragraph (b) deserves special mention; it requires that Tier II passenger trains be provided with a parking or hand brake that can be set and released manually and can hold the equipment on a 3-percent grade. A hand brake is an important safety feature that prevents the rolling or runaway of parked equipment.

Section 238.431 Brake System

This section contains the brake system design and performance requirements for Tier II passenger equipment, and, except for one provision, represents the consensus recommendation of the Tier II Equipment Subgroup. The provisions contained in this section are virtually

identical to the requirements proposed in the 1997 NPRM. Except for one commenter's recommendation that leeway be provided on the number of locations in a vehicle that must be equipped with a means to effectuate an emergency brake application on shorter equipment, no substantive adverse comments were received on the provisions contained in this section and, thus, they have been retained without change.

As noted in the 1997 NPRM, the main issue of concern among Subgroup members involved the capability of sensor technology used to monitor the application and release of brakes. Labor representatives maintained that a technology that actually measures the force of brake shoes and pads against wheels and brake discs is required for a reliable indication of brake application and release. Railroad operators contended that this technology is not commercially available and that monitoring pressure in brake cylinders does provide a reliable indication of brake application and release, particularly when those cylinders are directly adjacent to the point where brake friction surfaces are forced together. FRA agrees that the technology suggested by certain labor commenters is not currently available and that brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years. Although FRA agrees that these indicators do not provide 100 percent certainty that the brakes are effective, they have proven effective enough to be preferable to requiring an inspector to assume a dangerous position while inspecting a train's brake system.

Aside from this issue, the rest of the brake system design and performance requirements contained in this section received widespread support. In fact, several of the requirements were contained in written positions provided by both rail labor and management members of the Subgroup, and virtually all of the requirements were discussed in the high-speed passenger equipment section of the 1994 NPRM on power brakes. See 59 FR 47693-94, 47699-47700, and 47730. Many of the requirements in this section are similar to the requirements for Tier I passenger equipment contained in § 238.231, thus the discussion related to that section should be read in conjunction with the following discussion.

Paragraph (a) of this section is virtually identical to the requirement related to the braking systems of Tier I passenger equipment in § 238.231(a).

Paragraph (b) contains a requirement similar to that in § 238.231(b) and is

intended to protect railroad employees. FRA believes that inspectors of equipment must be able to ascertain if brakes are applied or released without placing themselves in a vulnerable position. This final rule allows railroads the flexibility of using a reliable indicator in place of requiring direct observation of the brake application or piston travel because the designs of many of the brake systems used on passenger equipment make direct observation of the brakes extremely difficult. 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 the brakes are effective, they have proven effective enough to be preferable to requiring an inspector to assume a dangerous position.

Paragraph (c) is virtually identical to the requirement contained in § 238.231(c), and is a fundamental brake system performance requirement that an emergency brake application feature be available at any time and produce an irretrievable stop. This paragraph contains an additional requirement that a means to actuate the emergency brake be provided at two locations in each unit of the train. This additional requirement ensures the availability of the emergency brake feature and is in accordance with the current available design of high-speed passenger equipment. FRA received comments from Renfe Talgo recommending that FRA change this requirement to permit shorter equipment to provide only one location in each unit of a train with a means to actuate the emergency brake. This commenter recommends such leeway due to the fewer number of passengers in these units and due to the distance any one passenger would be to the actuation device when compared to the distance in standard length passenger train units. FRA has modified this paragraph to provide that equipment that is 45 feet or less in length (approximately one-half the length of standard passenger equipment) need provide a means to actuate the emergency brake at only one location in each such unit of the train.

Paragraph (d) requires the brake system to be designed to prevent thermal damage to wheels and brake discs.

Paragraph (e) contains requirements related to blended braking systems. These requirements are similar to those contained in § 238.231(j). The only additional requirement is that the operational status of the electric portion of the blended brake be displayed in the operator's cab. Operators of this high-

speed equipment may use different train handling procedures when the electric portion of blended brake is not available. Therefore, a dangerous situation could arise when an operator of these high-speed trainsets expects the electric portion of the blended brake to be available and it is not. FRA believes that when operations exceed 125 mph either the train must not be used if the electric portion of the blended brake is not available, or the train operator must know that the electric portion of the blended brake is not available so he or she can be prepared to use compensating train handling procedures. Further, FRA believes that if the additional heat input to wheels or discs caused by lack of the electric portion of the blended brake causes thermal damage to these braking surfaces, then the electric portion of the blended brake should be considered a required safety feature and, unless it is available, the equipment should not be used.

Paragraph (f) requires the brake system to allow a disabled train's pneumatic brakes to be controlled by a conventional locomotive during rescue operations.

Paragraph (g) requires that Tier II passenger trains be equipped with an independent brake failure detection system that compares brake commands to brake system outputs to determine if a failure has occurred. This paragraph also requires that the brake failure detection system report failures to the automated monitoring system, which is contained in § 238.445, thus alerting the train operator to potential brake system degradation so that the operator can take corrective action such as slowing the train.

Paragraph (h) requires that all Tier II passenger equipment be provided with an adhesion control system designed to automatically adjust the braking force on each wheel to prevent sliding during braking. This paragraph also requires that the train operator be alerted in the event of a failure of this system with a wheel slide alarm that is visual or audible, or both. This feature ties the adhesion control system to the automated monitoring system and prevents dangerous wheel slide flat conditions that can be caused when wheels lock during braking.

Section 238.433 Draft System

FRA is requiring that leading and trailing automatic couplers of Tier II trains be compatible with standard AAR couplers with no special adapters used. FRA believes that compatibility with standard couplers is necessary in order that a conventional locomotive could

assist in the rescue of disabled Tier II passenger equipment. In addition, couplers must include an automatic coupling feature as well as an uncoupling device that complies with 49 U.S.C. chapter 203, 49 CFR part 231, and 49 CFR § 232.2. FRA believes that automatic uncoupling devices are necessary in order to comply with the intent of the statute so that employees will not have to place themselves between equipment in order to perform coupling or uncoupling operations.

Section 238.435 Interior Fittings and Surfaces

This section contains the requirements for interior fittings and surfaces. Once survivable space is ensured by basic vehicle structural strength and crash energy management requirements, the design of interior features becomes an important factor in preventing or mitigating injuries resulting from collisions or derailments. Loose seats, equipment, and luggage are a significant cause of injuries in passenger train collisions and derailments.

Paragraphs (a) through (c) contain requirements for the design of passenger car seats and the strength of their attachment to the car body. These requirements are based on sled tests of passenger coach seats, seat tests conducted for other modes of transportation, and computer modeling to predict the results of passenger train collisions. These provisions include a requirement for shock absorbent material on the backs of seats to cushion the impacts of passengers with the seats ahead of them.

FRA has modified paragraph (a) based on comments received in response to the NPRM. In the NPRM, FRA proposed requiring a seat back in a passenger car to be designed to withstand, with deflection but without total failure, the load of a seat occupant who is a 95th-percentile male accelerated at 8g who impacts the seat back. See 62 FR 49819. Simula, in commenting on the NPRM, suggested that the seat back in a passenger car should be designed to withstand, with deflection but without total failure, the impact of unrestrained occupant(s) seated behind the test article (seat back) and subjected to the same crash pulse. Further, in its comments on the NPRM, Bombardier noted that the design of the seats in Amtrak's HTS is based on a 185-pound occupant according to Amtrak's specification, while paragraph (a) specified the occupant size as a 95th-percentile male.

In the final rule, paragraph (a) requires that the design of the seat back

and seat attachment withstand, with deflection but without total failure, the load associated with the impact into the seat back of an unrestrained 95th-percentile adult male initially seated behind the seat, when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds. (As used in this section, a 95th-percentile adult male has been defined in § 238.5.) This modification clarifies the intent of the proposal, and specifies a crash pulse. As noted by Simula, specifying a crash pulse recognizes the importance of testing seats dynamically to represent actual conditions in a train collision. Paragraph (a) has also been modified to incorporate paragraph (c)(1) of the proposed rule by stating that the seat attachment must also resist the specified load as well, and this is discussed below.

In response to Bombardier's comment on the size of the occupant seated behind the seat being tested for purposes of determining the required strength of the seat, FRA notes that the specification for Amtrak's HTS does provide for use of a smaller occupant than is specified in the rule. However, the Amtrak specification also provides that the occupant be subjected to a more severe crash pulse than that specified in the rule. As a result, FRA believes that under paragraph (a) the energy required to be absorbed by the seat being tested is not greater than that provided for in the Amtrak specification, and FRA has not modified the rule on this point.

As noted above, FRA has modified paragraph (c) in the final rule by incorporating proposed paragraph (c)(1) into paragraph (a) of the final rule and retaining, as renumbered in paragraph (c) of the final rule, proposed paragraphs (c)(2) and (c)(3) in the NPRM. See 62 FR 49819. FRA has incorporated proposed paragraph (c)(1) into paragraph (a) of the final rule based in part on a comment from Simula that the ultimate strength of a seat attachment to a passenger car body shall be sufficient to withstand a crash pulse representing a typical train accident (275 msec triangular pulse, peak acceleration 10 G) and the impact of an unrestrained occupant(s) behind the test article. Incorporating the longitudinal strength requirement proposed for the seat attachment in paragraph (c)(1) of the NPRM into paragraph (a) of the final rule rationalizes the rule and recognizes that the seat attachment requirement and the seat back requirement both take into account the force of a train occupant impacting the seat from behind. However, FRA has not adopted Simula's recommendation to increase

the g loading that the seat attachment is required to withstand or specify a crash pulse as long as 275 milliseconds, triangular. Simula's recommendation appears to be based on the assumption that higher speed train collisions will result in greater decelerations of longer duration in a trailer car. Yet, FRA believes that the resulting decelerations will have only a longer duration. As the duration for which an occupant impacts an interior surface has a negligible influence on potential injury, the 8g force and 250 msec crash pulse specified in this paragraph is appropriate for Tier II passenger equipment.

The lateral and vertical loading requirements in paragraph (c) remain unchanged from the NPRM other than being renumbered.

FRA has not incorporated two other comments from Simula on this section for the reasons noted below. First, Simula suggested adding a requirement that two rows of seats should be included in the seat testing and positioned to represent the row-to-row pitch for installation. FRA has not modified the rule in this regard, because FRA believes it evident that in testing seats to show compliance with the requirements of this section the positioning of the seats must represent the actual positioning of the seats in the passenger car subject to the requirements of this section. In addition, Simula recommended that instrumented Hybrid III dummies be seated in the row behind the test article to determine occupant injury potential during a dynamic test, and that the data measured by the dummies meet specified injury criteria available in a pending APTA standard. Simula further recommended that the number and size of unrestrained occupants (crash test dummies) to be used in testing be defined in the APTA standard. Simula noted that the results of ongoing research will be used to complete the standard, and that to meet injury performance criteria the railroad may have to use some form of occupant restraint system. As evidenced by Simula's comments, specifying occupant injury criteria is an ongoing issue and, as such, is best deferred to the second phase of this rulemaking. FRA does recognize that pursuing the specification of occupant injury criteria is both sound and technically appropriate, and encourages research in this regard for use in the second phase of the rulemaking, in addition to examining the use of NHTSA occupant injury criteria.

Paragraph (d) contains the requirements for strength of attachment

of interior fittings and is similar to that required in § 238.233(c). Similar to its comment noted above, Bombardier remarked that proposed paragraph (d) specified a 95th-percentile male for use in determining the required strength of certain interior fittings. See 62 FR 49819-20. Bombardier explained that the design of tables for Amtrak's HTS does not follow this approach, and that, based on research conducted within the rail industry, it relates to impact velocities of a 185-pound occupant. Bombardier was unsure how the proposed rule compared to the way tables were being designed and constructed for Amtrak's HTS, and requested that the practicality of the proposed approach be first considered. As FRA responded above to Bombardier's similar comment, FRA believes that specifying a larger occupant size will not in itself increase the strength that the fitting is required to withstand since the Amtrak specification provides that the 185-pound occupant must resist a more severe crash pulse than that provided in the rule. FRA believes the requirement in paragraph (d) is not greater than that required under the Amtrak specification for HTS.

Paragraph (e) contains a special requirement for the ultimate strength of seats and other fittings in the cab of a power car. Due to the extra strength of the cab, its structure is capable of resisting forces caused by accelerations that exceed 10g. As a result, benefit can be gained from a greater longitudinal strength requirement for seat and other interior fitting attachments. FRA is therefore requiring that seats and equipment in the cab be attached to the car body with sufficient strength to resist longitudinal forces caused by an acceleration of 12g. The lateral and vertical requirements remain 4g. These requirements do not apply to equipment located outside the cab.

In its comments on the NPRM, Simula also recommended that the 12g longitudinal requirement be supplemented by a 250-millisecond dynamic crash pulse. However, FRA believes that this will result in a more expensive test without a corresponding increase in safety. Simula further suggested that the 4g lateral and vertical loading requirements apply to the combined mass of the seat and the seat occupant. FRA notes that such a requirement is provided in § 238.447(f)(2).

Paragraphs (f) and (g) contain requirements representing good safety design practice for any type of vehicle.

FRA believes the luggage restraint requirement in paragraph (h) will

prevent many of the injuries caused by flying luggage that are typical of passenger train collisions and derailments.

FRA has included paragraph (i) in the final rule, consistent with its parallel requirement in § 238.233(g) for Tier I passenger equipment.

Section 238.437 Emergency Communication

This section requires an emergency communication system with back-up power within a Tier II train. This safety feature will allow the train crew to provide evacuation and other instructions to passengers, and help prevent panic that can occur during emergency situations.

FRA's principal revision to this section allows passenger cars 45 feet or less in length to have only one emergency communication transmission location. FRA had proposed that transmission locations be placed at both ends of each passenger car. In response to the proposal, Talgo commented that in considering the placement of transmission locations, the operative factor should be the distance from any point on the train to the nearest transmission unit—rather than specifying that they be placed at the ends of each passenger car. Talgo believed this necessary to accommodate cars which are half the length in size of conventional cars.

As the length of a conventional railroad passenger car is typically between 85 and 90 feet, FRA believes it appropriate to require a car not more than half that length to have only one emergency communication transmission unit. However, FRA is not prepared to specify a requirement to place such transmission units solely on the distance from any point on the train to the nearest transmission unit. By taking into account the location of transmission units on a train level, the nearest transmission unit to a passenger seated in one car may in fact be a transmission unit located in an adjoining car. However, having to pass into an adjoining car to access the transmission unit, although nearer linearly, may at a minimum be impracticable in certain situations. FRA believes that each Tier II passenger car, no matter its size, must have its own emergency communication transmission unit.

This section also requires that emergency communication transmission locations be marked with luminescent material, that clear instructions be provided for the use of the emergency communication system, and that the emergency communication system have

back-up power for a minimum period of 90 minutes.

In commenting on the rule, the NTSB noted that FRA had not proposed emergency communication requirements for Tier I operations. The NTSB believed that emergency communication requirements are necessary for Tier I operations because the majority of passenger train accidents have occurred in those operations. The NTSB also stated that emergency communication requirements should not be limited to intra-train operations, but include as well the ability to communicate from the train to outside sources. In a similar comment on the NPRM, the UTU stated that passenger trains should not be dispatched without working head end radios and a reliable backup system. The UTU also commented that all conductors and crewmembers should be issued portable radios capable of communicating with each other, the head end, and the dispatcher or control center.

FRA is not applying the Tier II requirements for intra-train emergency communication to Tier I operations at this time. FRA agrees with the NTSB's comment that emergency communication requirements should not be a function of speed, but rather a function of the design and configuration of the train and the terrain in which the train operates. Yet, FRA's decision here is not based on speed. FRA initially proposed to limit this proposal to Tier II passenger trains because such trains are intended to operate as a fixed unit, unlike most Tier I passenger trains. Whereas an emergency system to communicate throughout the train may be more easily provided for in a train which remains as a fixed unit, the interchangeability of passenger cars and locomotives raises practical considerations about the compatibility of communications equipment in a Tier I passenger train. FRA believes it best to address these considerations and further examine requirements concerning emergency communication within a Tier I train in the second phase of the rulemaking, following consideration of these issues by the APTA PRESS Task Force.

As to requirements for emergency communication from a train to an outside source, FRA has addressed such requirements in the Railroad Communications final rule, designated as Docket No. RSOR-12. See 63 FR 47182; Sept. 4, 1998. FRA recognizes that the ability to communicate in an emergency is important for all trains—freight and passenger. In particular, because passenger trains operate commingled with freight trains, the

ability of a freight train crew to notify a railroad control center of an emergency involving its train may prevent a collision with an oncoming passenger train. The railroad communications rulemaking was supported by a working group, established through RSAC, which specifically addressed communication facilities and procedures, with a strong emphasis on passenger train emergency requirements. In general, section 220.209 of the Railroad Communications final rule provides that, for each railroad having no fewer than 400,000 employee work hours, each occupied controlling locomotive in a train shall have a working radio that can communicate with the control center of the railroad, and each train shall also have communications redundancy, i.e., a working radio on another locomotive in the consist or other means of working wireless communication. See 49 CFR § 220.9; 63 FR 47195-6. Moreover, in addition to the requirements of the Railroad Communications rule, FRA notes that intercity passenger and commuter railroads already make extensive provision for ensuring communication capabilities during emergencies. FRA believes that other communications issues have been resolved either in the railroad communications rulemaking, the passenger train emergency preparedness rulemaking, or this final rule. However, any final issues can be addressed in the second phase of this rulemaking.

Section 238.439 Doors

This section contains the requirements for doors on Tier II passenger cars. This section should be read with the discussion of passenger car doors earlier in the preamble. As stated, FRA has modified the requirement for the number of exterior side doors per passenger car (contained in paragraph (a)) by specifying that each car shall have a minimum of two such doors.

The requirements in paragraph (b) are similar to those contained in § 238.235(b) for Tier I passenger equipment. However, the requirements of paragraph (c) have no counterpart in § 238.235. This paragraph requires the status of powered, exterior side doors to be displayed to the crew in the operating cab and, if door interlocks are used, the sensors to detect train motion must nominally be set to operate at not more than 3 mph. Such equipment is well within current technology. Paragraph (d) requires that powered, exterior side doors be connected to an emergency back-up power system.

Paragraph (e) is identical to that provided for Tier I passenger equipment in § 238.235(c).

Paragraph (f) requires passenger compartment end doors to be equipped with a kick-out panel, pop-out window, or other means of egress in the event the doors will not open, or be so designed as to pose a negligible probability of becoming inoperable in the event of carbody distortion following a collision or derailment. This paragraph does not apply to such doors providing access to the exterior of a trainset, however, as in the case of an end door in the last car of a train. In the NPRM, FRA discussed that the requirements in this paragraph originally arose out of the NTSB's emergency safety recommendations following its investigation of the February 16, 1996, collision between a MARC commuter train and an Amtrak passenger train in Silver Spring, Maryland. See 62 FR 49734-5. Specifically, as stated in its final railroad accident report, the NTSB recommended that FRA:

Require all passenger cars to have either removable windows, kick panels, or other suitable means for emergency exiting through the interior and exterior passageway doors where the door could impede passengers exiting in an emergency and take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards. (NTSB/RAR-97/02) (R-97-15)

As explained in the NPRM, FRA proposed that the first practical application of the NTSB's recommendation be made with respect to Tier II passenger car end doors. See 62 FR 49735. FRA has been assisting APTA through its PRESS task force examine the full range of options for implementing the NTSB recommendation in Tier I passenger equipment, in addition to the Volpe Center's work on emergency egress on a systems level. These complementary efforts will be brought together in the second phase of the rulemaking.

FRA notes that it has modified paragraph (f) from the proposal in the NPRM, see 62 FR 49820 (proposed § 238.441(d)), to permit Tier II passenger car doors to be designed without a kick-out panel, pop-out window, or like feature, provided that the doors pose a negligible probability of becoming inoperable in the event of carbody distortion following a collision or derailment. FRA believes this modification is consistent with the NTSB's safety recommendation (R-97-15).

Paragraph (g) is reserved for door marking and operating instruction requirements. These requirements are

currently provided in the rule on passenger train emergency preparedness at 49 CFR § 239.107. See 63 FR 24630, 24680. In phase II of the rulemaking, FRA will consider integrating the door marking and operating instruction requirements found in part 239 with this part. Additionally, FRA will consider revising those requirements as necessary.

Section 238.441 Emergency Roof Entrance Location

This section requires that Tier II passenger equipment either have a roof hatch or a clearly marked structural weak point in the roof to provide quick access for properly equipped emergency personnel. Such features will aid in removing passengers and crewmembers from a vehicle that is either on its side or upright.

In the NPRM, FRA proposed that each Tier II passenger car be equipped with a minimum of two such emergency roof entrance locations. See 62 FR 49820. Talgo, in its comments on this proposal, remarked that a passenger car half the length of a conventional passenger car should require only one roof hatch or structural weak point. Further, Bombardier commented that the high-speed trainsets it is constructing for Amtrak will have only one structural weak point located in the center of the passenger cars due to the location of roof-mounted air conditioning units at each end of the cars.

In the final rule, each Tier II passenger car and each cab of a power car is required to have at least one emergency roof entrance location to permit the evacuation of the vehicle's occupants through the roof. Beyond the issue of the sufficiency of the number of emergency roof entrance locations for Tier II passenger equipment is the larger issue of applying requirements for emergency roof entrance locations to Tier I passenger equipment. The final rule does not contain such requirements for Tier I passenger equipment, and there was no consensus within the Working Group to do so. See 62 FR 49750-1. However, FRA believes that work within the APTA PRESS Task Force will lead to reconciliation of Tier I and Tier II requirements on this issue. FRA intends to reexamine the requirements of this section in the second phase of the rulemaking with a view to applying emergency roof entrance locations requirements to Tier I passenger equipment. In the meantime, the public is entitled to the protection afforded by the Tier II standard. High-speed derailments may be more severe because of the total energy involved and a potentially longer "ride down" during

which injuries may occur, rendering occupants incapable of exiting the train under their own power.

Paragraph (b) is reserved for marking and instruction requirements to be specified as necessary in the second phase of this rulemaking.

Section 238.443 Headlights

FRA received no comments on this provision, and it is adopted as proposed. Because of the high speeds at which Tier II passenger equipment operates, FRA is requiring that a headlight be directed farther in front of the train to illuminate a person than is currently required for existing equipment under 49 CFR § 229.125(a). A Tier II passenger train will travel distances more quickly than a Tier I passenger train, and the train operator will have less time to react, thereby necessitating earlier awareness of objects on the track.

FRA notes that, as further specified in 49 CFR § 229.125(d)-(h), locomotives operated at speeds greater than 20 miles per hour over one or more public highway-rail crossings are required to be equipped with operative auxiliary lights. The requirements contained in § 229.125(d)-(h) do apply, according to their terms, to Tier II passenger equipment. Any proposal to the contrary in the NPRM was made in error.

Section 238.445 Automated Monitoring

This section contains the requirements related to the automated monitoring of the status or performance of various safety-related systems on Tier II passenger trains. A number of passenger train accidents have been either fully or partly caused by human error. The faster operating speeds of Tier II passenger equipment will afford the train operator less time to evaluate and react to potentially dangerous situations, thereby increasing the potential for accidents. Automated monitoring systems can decrease the risk of accidents by alerting the train operator to abnormal conditions and advising the operator as to necessary corrective action. Such systems can even be designed to take corrective action automatically in certain situations.

FRA received no comments on this section as proposed, and paragraphs (a) and (c) have been adopted without substantive change. However, FRA has modified paragraph (b) to make clear when immediate corrective action must be taken in the event a system or component required to be monitored is

operating outside of its predetermined safety limits.

Paragraph (a) requires a Tier II passenger train to be equipped to monitor the performance of a minimum set of safety-related systems and components. The monitoring system can also be used to provide information for trouble-shooting and maintenance and to accumulate reliability data to form the basis for setting required periodic maintenance intervals.

Paragraph (b) requires the train operator to be alerted when any of the systems or components required to be monitored is operating outside of predetermined safety parameters. When any such system or component is operating outside of its predetermined safety parameters, immediate corrective action must be taken if the system or component defect impairs the train operator's ability to safely operate the train. Accordingly, a report of a system or component defect may not require immediate corrective action. The need to take such action would be determined by the railroad based on whether the defective system or component impairs the train operator's ability to safely operate the train. Further, in the event immediate corrective action must be taken, the rule does not require that intervention be automatic. Of course, the railroad should have a valid basis for either leaving response in the hands of the train operator or making the corrective action automatic.

Paragraph (c) requires the monitoring system to be designed with an automatic self-test feature that notifies the train operator that the monitoring capability is functioning correctly and alerts the operator that a system failure has occurred. Because train operators can become dependent on automated monitoring systems, they need to know when their vigilance must be heightened to compensate for a malfunction in such an automated safety tool.

Section 238.447 Train Operator's Controls and Power Car Cab Layout

This section contains a set of requirements for interior features in Tier II power car cabs. FRA has clarified and revised this section, based on comments received in response to the proposal, in two principal ways: The seat requirements in paragraph (f) apply to any floor-mounted seat and each seat provided for an employee regularly assigned to occupy the power car cab, instead of to each crewmember in the cab; and such seats will not require seatbelts. FRA has also combined proposed paragraphs § 238.447(a) and

(b) in the NPRM, see 62 FR 49820-1, into paragraph (a) of this section in the final rule for economies of space. Subsequent paragraphs have been renumbered accordingly.

In its comments on the NPRM, Bombardier explained that an additional seat—commonly a flip-up or a shelf-type seat—is in many cases provided in the cab for a train crewmember who is not normally in the cab. Bombardier believed these seats should not be subjected to the same requirements as for the train operators' seats, as that was not the intent of discussions within the Working Group. Accordingly, Bombardier recommended making clear that the requirements in paragraph (f) apply only to each seat provided for the train operators.

FRA agrees with Bombardier's comment that the requirements proposed in § 238.447(g) of the NPRM and § 238.447(f) of the final rule—need not apply to each seat provided for a crewmember in a power car cab. FRA recognizes that flip-down and other auxiliary seats are provided in locomotive cabs for the temporary use of employees not regularly assigned to the cab. These employees may include a supervisor of locomotive engineers conducting an operational monitoring test of the engineer(s). Such seats are typically attached to an interior wall and placed behind those seats used by the train operators. FRA believes it appropriate to clarify the application of paragraph (f) in the final rule so that its requirements apply only to each seat provided for an employee regularly assigned to occupy the power car cab, and to any floor-mounted seat in the cab. Accordingly, paragraph (f) does not apply to a wall-mounted, flip-down seat occupied by an employee such as a supervisor of locomotive engineers who occasionally rides in the cab.

FRA has also modified paragraph (f) by not requiring that seats subject to that provision be equipped with a single-acting, quick-release lap belt and shoulder harness as defined in 49 CFR § 571.209. FRA had proposed such a requirement in the NPRM because the crew may experience high decelerations in a collision from the cab's high strength and forward location near the expected point of impact in many different collision scenarios. See § 238.447(g)(1), 62 FR 49821. In its comments on the NPRM, the BLE stated that its experience did not support the need to require a lap belt and shoulder harness, and that its member engineers were overwhelmingly against such a requirement. The BLE explained that engineers need to rapidly exit from the seat to a place of safety in the event of

an impending accident or act of vandalism. In such instances, the primary defense of the engineer is to move quickly from harms way, according to the BLE, and operating at speeds of 150 mph will decrease the time a locomotive engineer has to react to such incidents. The BLE noted that it would change its position on this issue if there is overwhelming evidence that the force of deceleration on Tier II equipment would be so severe as to cause injury to engineers or interfere with their operation.

In its comments on the rule, Simula remarked that formal research is needed to determine both the feasibility of incorporating active restraints in a cab and the potential for the crew to actually use them. Simula also noted the option of exploring passive restraints such as air bags or compartmentalization, as opposed to active restraints such as lap belts and shoulder harnesses. Simula explained that cost effectiveness considerations for implementing both compartmentalization and active and passive restraints are markedly different for the crew in the cab compared to passengers. Simula asserted that the relatively high cost of passive restraints may be justified for one or two crewmembers in a extremely severe environment.

In light of the comments received, FRA has decided to defer until Phase II of the rulemaking the issue of requiring seats in a power car cab to be equipped with seat belts and shoulder harnesses. FRA will continue to explore strategies for train occupant protection—both for passengers and employees—and FRA will be able to focus on these strategies with the members of the Working Group in Phase II.

In other statements on the NPRM, commenters recommended applying the requirements in this section to Tier I passenger equipment. The NTSB stated that the minimum elements proposed in this section for operator's controls and cab layout design are sufficient and should also be included in Tier I operations for ergonomic design and to minimize the chance of human error in both types of operations. The NTSB cited safety recommendations arising out of an accident in Kelso, California, concerning the dangers posed by improperly located safety-significant controls and switches in locomotives and the need to relocate and/or protect such controls and switches so they cannot be inadvertently activated or deactivated. FRA has not fully explored extension of these concepts with the working group and will take the issue under advisement for incorporation into

Tier I standards during Phase II of the rulemaking.

The BLE commented that the proposed requirements for seating in this section also be applied to Tier I equipment. The BLE stated that existing seating on some Tier I equipment is woefully inadequate. In particular, the BLE noted that some cab car seats are not adjustable; have no suspension; are severely limited in their cushioning; have no lumbar support; and are injuring their occupants. The BLE also recommended that both Tier I and Tier II equipment be provided with a cab temperature control system which maintains a minimum temperature of 65 degrees and a maximum of 85 degrees F.

FRA is not requiring that the detailed provisions in this section be imposed in full on Tier I passenger equipment. FRA believes these provisions are more necessary for Tier II passenger equipment because the higher operating speeds will press human reaction time, and such requirements will contribute to the ability of the crew to operate the train as safely as possible. In addition, several members of the Working Group opposed applying such requirements to Tier I passenger equipment, asserting that a number of the requirements involved ergonomic issues which do not directly affect safety. FRA notes that certain requirements concerning locomotive cab interior safety are provided in § 238.233 of the final rule.

Through RSAC's working group on Locomotive Cab Working Conditions, FRA and members of the regulated community have been evaluating issues concerning locomotive cab working conditions. As a number of issues concern both passenger and freight operations, FRA believes that such issues may best be addressed in this RSAC working group. Of course, FRA does recognize that the concern involving crew seats in cab cars is more unique to passenger operations, and FRA is therefore pleased by APTA's voluntary effort to improve crew seats on cab cars.

FRA notes that, for purposes of paragraph (f)(1) in this section, it has specified the crewmember occupying the seat as a 95th-percentile adult male, consistent with the use of a 95th-percentile adult male elsewhere in this rule. In the NPRM, the characteristics of the crewmember occupying the seat had not been specified, *per se*. See proposed § 238.447(g)(2); 62 FR 49821.

FRA further notes that, for purposes of paragraph (f)(2), it has not specified particular measurements or a particular survey on which to base the necessary characteristics of persons ranging from a

5th-percentile adult female to a 95th-percentile adult male. Instead, these characteristics may be drawn from any recognized survey after 1958 of weight, height, and other body dimensions of U.S. adults, corrected for clothing as appropriate. Data from such a survey is presented in Public Health Service Publication No. 1000, Series 11, No. 8, "Weight, Height, and Selected Body Dimensions of Adults," June 1965. (A copy of this document has been placed in the public docket for this rulemaking.) The definition of 95th-percentile adult male used elsewhere in the rule is too narrow to apply in this context.

Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment

Section 238.501 Scope

This subpart contains the inspection, testing, and maintenance requirements for passenger equipment that operates at speeds exceeding 125 mph but not exceeding 150 mph. As discussed in the 1997 NPRM, there is currently no operating history with regard to Tier II equipment, and thus there are no regulations or industry standards establishing detailed testing, inspection, or maintenance procedures, criteria, and intervals for the equipment. The railroads and the rail labor organizations differ on the approach that should be taken in establishing inspection, testing, and maintenance requirements. Railroads have long appealed to FRA to move away from detailed "command and control" regulations and instead to provide broad safety performance requirements that afford railroads wide latitude to develop the operational details. Rail labor organizations, on the other hand, believe that specific inspection, testing, and maintenance criteria that cannot be unilaterally changed by railroads are the only way that safe railroad operation can be assured.

FRA believes that the introduction of a new type of passenger equipment offers the opportunity for a fresh start, where perhaps both of these seemingly conflicting concerns can be resolved. This final rule retains the approach taken in the 1997 NPRM and contains general guidelines on the process to be used by the operating railroad, together with the system developer, to develop an inspection, testing, and maintenance program. The operating railroad and the system developer together have the best information, expertise, and resources necessary to develop the details of an effective inspection, testing, and maintenance program. The operating

railroad is thereby granted some latitude to develop the operational details of the program, using the system safety process to justify the safety decisions that are made. However, FRA intends to exercise final approval of the inspection, testing, and maintenance program proposed by the operating railroad; rail labor organizations will be given an opportunity to discuss their concerns with FRA during the approval process set forth in § 238.505. Tier II equipment may not be used prior to FRA approval of an inspection, testing, and maintenance program. Further, this final rule makes clear that FRA intends to enforce the safety-critical inspection, testing, and maintenance procedures, criteria, and maintenance intervals that result from the approval process.

Labor commenters recommended that if FRA is to permit the railroads to develop inspection and testing criteria and procedures for Tier II passenger equipment, then rail labor must be involved in the process as a full partner. These commenters also believed that any procedures developed must provide an equivalent level of safety to the inspection and testing procedures provided for conventional passenger equipment. Furthermore, these commenters believed that any testing and inspection procedures developed must be fully enforceable to the same extent as federal regulations.

Although FRA recognizes and appreciates labor's desire to be a full partner in the development of any inspection and testing procedures, and FRA fully endorses and recommends collaboration with appropriate labor forces, FRA does not believe it appropriate to mandate labor's participation in the initial stages of the development of such procedures. As the equipment for which the inspection and testing programs are being developed will be new, with little operating history, FRA believes that the operating railroad and the system developer have the best information, expertise, and resources necessary to develop the details of an effective inspection, testing, and maintenance program. Moreover, FRA believes this final rule provides the industry's labor forces with an adequate avenue for raising any issues and providing input on any criteria or procedure developed by a railroad. Section 238.505 ensures that designated representatives of a railroad's employees are provided a copy of any inspection, testing, and maintenance criteria or procedures submitted by the railroad for FRA approval and provides an opportunity for these parties to present their views on the submitted plans and procedures

prior to FRA's approval or rejection of any program. Furthermore, this section addresses all of the major inspections and test provisions related to conventional passenger equipment and ensures that any program developed by a railroad regarding the inspection, testing, and maintenance of Tier II passenger equipment incorporate these major requirements. Finally, paragraph (b) of this section, as discussed in detail below, makes clear that the provisions of any program approved by FRA related to the inspection and testing of power brakes or other inspection, test, or maintenance procedure, criteria, and interval that is deemed to be safety-critical will be enforceable to the same extent as any other requirement contained in this part.

Section 238.503 Inspection, Testing, and Maintenance Requirements

This section requires the establishment by the railroad of an FRA-approved inspection, testing, and maintenance program based on a daily complete brake system test and mechanical safety inspection of the equipment performed by qualified maintenance persons, coupled with a periodic maintenance program based on a system safety analysis. Although paragraph (a) contains some basic requirements to be included in a program, FRA does not intend to prescribe every detail of what a program must contain. FRA requires the operating railroad to develop and justify the details of any program it adopts based on the specific safety needs and operating environment of the high-speed rail system being developed.

Paragraph (b) intends to make enforceable, subject to civil penalties and other enforcement action, the inspection and testing of power brakes and the other safety-critical inspection, testing, and maintenance requirements that are identified in the railroad's program and approved by FRA. "Safety-critical" requirements are those that, if not fulfilled, increase "the risk of damage to equipment or personal injury to a passenger, crewmember, or other person." See § 238.5. Under paragraph (l), the railroad must identify which items in its inspection, testing, and maintenance program are safety-critical. The railroad must submit the program to FRA under the procedures contained in § 238.505. Once these programs are approved by FRA, this section makes clear those items identified as safety-critical are enforceable by FRA. FRA agrees with labor representatives to the Working Group that safety standards are stronger when they contain specific provisions that can be enforced.

Paragraph (c) requires that the operating railroad develop an inspection, testing, and maintenance program to ensure that all systems and components of Tier II passenger equipment are free of general conditions that endanger the safety of the crew, passengers, or equipment. FRA has identified the various conditions enumerated in paragraph (c) that would need to be addressed in the railroad's program. Consequently, FRA has defined what the inspection, testing, and maintenance program must accomplish, but not how to accomplish it.

Paragraph (d) contains the more specific requirements that any inspection, testing, and maintenance program must incorporate. In paragraph (d)(1), FRA requires that Tier II equipment receive the equivalent of a Class I brake test, as described in § 238.313, before its departure from an originating terminal and every 1,500 miles after that or once each calendar day the equipment remains in service. The test must be performed by a qualified maintenance person. For example, a Tier II train must receive the equivalent of a Class I brake test at its originating terminal and must receive a second Class I equivalent brake test after traveling 1,500 miles from the time of the original Class I brake test, whether or not it is the same calendar day. Furthermore, a Tier II train must receive the equivalent of a Class I brake test each calendar day it is used in service even if it has not traveled 1,500 miles since the last Class I equivalent brake test. Due to the speeds at which this equipment is permitted to operate, FRA believes that a comprehensive brake test must be performed prior to the equipment being placed in service.

Paragraph (d)(2) requires that a complete exterior and interior mechanical inspection be conducted by a qualified maintenance person at least once each calendar day that the equipment is used. In order to perform a quality mechanical inspection, railroads must be provided some flexibility in determining the locations where these inspections can best be performed. FRA believes that permitting railroads to conduct these mechanical inspections at any time during the calendar day provides adequate flexibility to move equipment to appropriate locations. Trains that miss a scheduled Class I brake test or mechanical inspection due to a delay en route may proceed to the location where the Class I brake test or mechanical inspection was scheduled to be performed. FRA recognizes that, due to the specialized nature of this

equipment, proper inspections can only be conducted at a limited number of locations. FRA also recognizes that trains become delayed en route due to problems which are not readily foreseeable. Thus, FRA will permit the continued use of such equipment to the location where the required inspection was scheduled to be performed.

Paragraph (e) restates § 238.15 and provides a cross-reference to that section. The paragraph provides that trains developing en route defective, inoperative, or insecure primary brake equipment be moved in accordance with the requirements of that section.

Paragraph (f) restates § 238.17 and adds a narrow exception to that section. The paragraph requires that Tier II equipment that develops a defective condition not related to the primary brake be moved and handled in accordance with the requirements contained in § 238.17, with one exception. The exception to these requirements applies to a failure of the secondary portion of the brake that occurs en route. In those circumstances, the train may proceed to the next scheduled equivalent Class I brake test at a speed no greater than the maximum safe operating speed demonstrated through analysis and testing for braking with the friction brake alone. At that location the brake system shall be restored to 100 percent operation before the train continues in service. This final rule allows extensive flexibility for the movement of equipment with defective brakes, but also contains a hard requirement that all brake components be repaired and the brake system, including secondary brakes, be restored at the location of the train's next major brake test. FRA believes that this approach recognizes the secondary role played by the electric portion of blended brakes. If the railroad has demonstrated that the friction brake alone can stop the train within signal spacing without thermal damage to braking surfaces, then the train may be used at normal maximum speed in the event of an electric brake failure. This final rule essentially limits the use of trains without available secondary braking systems to no more than 48 hours. FRA believes that § 238.17 strikes the correct balance between the need of railroads to transport passengers to their destination and the need to have equipment with defects that could lead to more serious safety problems quickly repaired. This requirement places a heavy responsibility on qualified maintenance persons to exercise their judgment on when and how equipment is safe to move.

Paragraph (g) requires that scheduled maintenance intervals be based on the analysis conducted pursuant to the railroad's safety plan, and be approved by FRA under the procedures of § 238.505. The rule allows 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 paragraph is another attempt to balance the needs of the operating railroad to run efficiently and the concern of rail labor organizations that railroads not have the ability to unilaterally make safety decisions. For a new system, with no operating history, a formal system safety analysis is the only justifiable way to set initial maintenance intervals. The paragraph recognizes that as time passes and an operating history is developed, a basis for changing maintenance intervals can be established. However, the decision to make these changes must have the participation of all the affected parties.

Paragraph (h) requires that the operating railroad establish a training, qualification, and designation program as defined in the training program plan under § 238.109 to qualify individuals to perform safety inspections, tests, and maintenance on the equipment. If the railroad deems it safety-critical, then only qualified individuals may perform the safety inspection, test, or maintenance of the equipment. This paragraph does not prescribe a detailed training program or qualification and designation process. Those details are left to the operating railroad, but FRA must approve the program proposed by the operating railroad under procedures contained in § 238.505.

Paragraph (i) requires the operating railroad to establish standard procedures for performing all safety-critical inspections, tests, maintenance, or repair. This paragraph also makes clear that the inspection, testing, and maintenance program required by this section should not include procedures to address employee working conditions that arise in the course of conducting the inspections, tests, and maintenance set forth in the program. FRA intends for the program required by this section to detail only those tasks required to be performed in order to conduct the inspections, tests, and maintenance necessary to ensure that the equipment is in safe and proper condition for use. In proposing the creation of these plans, FRA did not intend to enter into the area of addressing employee safety

while conducting the inspections, tests, and maintenance covered by the programs. FRA is always concerned with the safety of employees while conducting their duties, but employee safety in maintenance and servicing areas generally falls within the jurisdiction of OSHA. It is not FRA's intent to oust OSHA's jurisdiction with regard to the safety of employees while performing the inspections, tests and maintenance required by this part, except where FRA has already addressed workplace safety issues, such as blue signal protection. Therefore, in order to prevent any uncertainty as to FRAs intent, FRA has modified this paragraph by eliminating any language or provision which could have been potentially perceived as displacing the jurisdiction of OSHA and has added a specific clarification that FRA does not intend for the program required by this section to address employee safety while conducting the inspections and tests described. Consequently, the specific elements that FRA proposed to be included in the inspection, testing, and maintenance plan have been eliminated for the reasons noted above and because they were merely duplicative of the general requirements contained in paragraph (a) of this section and are unnecessary.

Paragraph (k) requires that the operating railroad establish an inspection, testing, and maintenance quality control program enforced by railroad or contractor supervisors. In essence, this creates the need for the operating railroad to perform spot checks of the work performed by its employee and contract equipment maintainers to ensure that the work is performed in accordance with established procedures and Federal requirements. FRA believes this is an important management function that has a history of being neglected in the railroad industry.

Paragraph (l) requires the operating railroad to identify each inspection and testing procedure and criterion and each maintenance interval that the railroad considers safety-critical.

Section 238.505 Program Approval Procedure

This section contains the procedures a railroad shall follow in securing FRA approval of its inspection, testing, and maintenance program for Tier II passenger equipment. As no substantive adverse comments were received on this section, FRA has retained this section as proposed in the 1997 NPRM.

Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment

Section 238.601 Scope

This subpart contains specific requirements for Tier II passenger equipment safety planning. These safety planning requirements include requirements for the operation of Tier II passenger equipment, procurement of Tier II passenger equipment, and the introduction or major upgrade of new technology in existing Tier II passenger equipment that affects a safety system on such equipment.

The discussion of this subpart should be read in conjunction with the general discussion of safety planning earlier in the preamble. FRA is retaining more extensive safety planning requirements for Tier II railroad operations, as these will be operations with new characteristics that require special attention and have heightened safety risks due to the speed of the equipment.

Section 238.603 Safety Planning Requirements

Paragraph (a) requires that, prior to commencing revenue service operation of Tier II passenger equipment, each railroad shall prepare and execute a written plan for the safe operation of such equipment. The plan may be combined with a pre-revenue service acceptance testing plan required under § 238.111, and any other plan required under this part provided that the individual planning elements required under this part are addressed. The plan shall be updated at least every 365 days.

Paragraph (b) requires that for each procurement of Tier II passenger equipment, and for each major upgrade or introduction of new technology in existing Tier II passenger equipment that affects a safety system on such equipment, each railroad shall prepare and execute a written safety plan. The plan may also be combined with a pre-revenue service acceptance testing plan required under § 238.111, and any other plan required under this part provided that the individual planning elements required under this part are addressed.

As noted earlier in the preamble, Bombardier, in its comments on the NPRM, believed that the proposed rule confused the requirements for a railroad's system safety plan with those required for equipment acquisition. Bombardier recommended that they be separately addressed. This section in the final rule reflects these comments in that paragraph (a) addresses requirements for an overall safety plan for Tier II passenger equipment, while paragraph (b) addresses planning

requirements for equipment acquisition and upgrade.

Paragraph (c) requires that each railroad maintain sufficient documentation to demonstrate how the operation and design of its Tier II passenger equipment complies with safety requirements or, as appropriate, addresses safety requirements under paragraphs (a)(4) and (b)(7) of this section. Each railroad shall also maintain sufficient documentation to track how safety issues are raised and resolved.

Paragraph (d) requires that each railroad make available to FRA for inspection and copying upon request each safety plan required by this section and any documentation required pursuant to such plan. This section does not in itself require FRA approval of a plan. However, FRA approval would be required for those sections of a plan intended to comply with the requirements of § 238.111, for example.

Appendix A—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties to be used in connection with this part. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Commenters were 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 were also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation. FRA received no specific comments in response.

Appendix B—Test Methods and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

The table of test methods and performance criteria contained in Appendix B has been revised to address concerns related to their adoption as a regulation. These revisions include reorganization of categories and function of materials listed in the table in Appendix B; inclusion of a note to permit the substitution of seat and mattress assembly tests for individual material tests; inclusion of a note to require dynamic tests to be performed for seat cushions prior to fire tests; revision of performance criteria for certain materials; inclusion of a note to permit a testing exception for small parts; inclusion of a note to permit the use of an alternative heat release rate

and smoke generation test for small miscellaneous, discontinuous parts; and addition of a category for wire and cable insulation requirements. Three definitions which relate to heat release rate were added to those previously listed in Appendix B of the NPRM. A new category of structural components other than structural flooring which may be exposed to fire hazards and associated notes was also added. The complete list of notes has also been renumbered from that contained in the NPRM to reflect these revisions.

The revisions were selected based on the results of analysis of input from several resources. (A detailed rationale for all revisions is also contained in a supporting document prepared under contract to the Volpe Center and placed in the public docket for this rulemaking.⁶) First, the comments of the parties who responded to the NPRM were reviewed. As raised in particular by Fire Cause Analysis in its comments on the NPRM, the current classification of items listed in the categories and functions in the table contained in Appendix B in the NPRM (based on FRA's 1989 guidelines) has caused confusion and conflict as to what materials should be tested according to what test methods. Second, a document containing the rationale for the development of the original flammability and smoke emission tests and performance criteria was reviewed.⁷ Third, the previous **Federal Register** notices pertaining to tests and performance criteria published as the 1989 FRA guidelines (54 FR 1837; Jan 17, 1989) and published as recommended practices by FTA (then-UMTA) for rail transit vehicles (47 FR 53559, Nov. 26, 1982; 49 FR 32482, Aug. 14, 1984) and for transit buses and vans (55 FR 27402, July 2, 1990; 57 FR 1360, Jan 13, 1992; 58 FR 54250, Oct. 20, 1993) were reviewed. Fourth, the input from railroad operators, carbuilders, and consultants who participated in a Workshop held at the NIST Building and Fire Research Laboratory in July 1997 was considered.⁸ Fifth, documentation prepared by the NFPA Railroad Task Force for the NFPA 130

Committee was reviewed.^{9,10} Sixth, the results of the ongoing FRA-sponsored NIST fire safety research project were reviewed; as well as the results of tests jointly funded by Amtrak and FRA using alternative seat assemblies considered for use in Amtrak's high-speed trainsets. Seventh, the results of the NTSB-sponsored fire tests conducted for MARC commuter rail cars were reviewed.¹¹ All of these inputs and further analysis were used as the basis to simplify the table in Appendix B of the NPRM and reduce confusion and duplication in revising the list of tests and performance criteria and related notes.

Most of the items listed under "Function of Material" in the table in Appendix B of the NPRM have identical (or nearly identical) flammability pass/fail performance criteria. For example, although they were listed separately in the NPRM under function of material in the table, "Seat and/or Mattress Frame"; "Seat and Toilet Shroud"; "Wall"; "Ceiling"; "Windscreen"; "Partition, Tables and Shelves"; "HVAC Ducting"; "Window"; "Light Diffuser"; "End Cap [and] Roof Housings"; and "Interior [and] Exterior Boxes" all were subject to the same ASTM E 162 test procedure and performance criteria for flame spread. Accordingly, in the final rule, all of these items have been combined under the single category of "Vehicle Components" in the table in Appendix B. Overall, the items listed under "Category" and "Function of Material" have been decreased from seven to six and from twenty-eight to ten, respectively, from the same table in the NPRM. The majority of entries have also been re-titled. The new "Category" and "Function of Material" titles streamline the table presentation while retaining all the actual material functions used in an intercity or commuter rail passenger car

⁹ "Proposed Revision of NFPA 130, Table 4-2.4, Recommendations for Testing the Flammability and Smoke Emission Characteristics of Rail Transit Vehicle Materials; Review Paper—Status Update." NFPA 130 Press Working Group Meeting of 8/15/97. Prepared by J. Zicherman. A copy of this document has been placed in the public docket for this rulemaking.

¹⁰ "Proposed Revision of NFPA 130 Table 4-2.4, Recommendations for Testing the Flammability and Smoke Emission Characteristics of Rail Transit Vehicle Materials; Review Paper—Status Update." NFPA 130 Press Working Group Meeting of 10/15/97. Prepared by J. Zicherman. A copy of this document has been placed in the public docket for this rulemaking.

¹¹ "Interpretive Report: Flammability and Smoke Compliance and Fire Analysis (MARC/Amtrak Collision, February 16, 1996)." Prepared for National Transportation Safety Board. Prepared by J. G. Quintiere, University of Maryland. Final Report. December 19, 1996. A copy of this document has been placed in the public for this rulemaking.

⁶ "Recommendations for Revising the Fire Safety Performance Requirements in Federal Railroad Administration Notice of Proposed Rulemaking (NPRM) For Passenger Equipment, September 23, 1997." Prepared by J. Zicherman and S. Markos. Draft Project Memorandum. December, 1998.

⁷ "Rationale for Recommended Fire Safety Practices for Rail Transit Materials Section." Transportation Systems Center. Report nos: MA-06-0098-82-1, and DOT-TSC-UMTA 81-74, January, 1983. A copy of this document has been placed in the public docket for this rulemaking.

⁸ "Follow-Up Notes: NIST/CFR FRA Project, Meeting/Workshop of 7/23/97," above.

or locomotive cab. Some revisions have also been made to acknowledge that certain existing performance criteria are so close as to be indistinguishable based on the precision of the test methods used (e.g., flame spread values of 25 vs. 35 using test procedure ASTM E 162). Of course, some material categories or subcategories could not be combined since they require different test methods, e.g., fabrics versus cushions. In addition, other considerations (such as ballistic test requirements for plastic window glazing) have precluded the combination of (and thus identical performance criteria for) some categories and material functions.

Specific revisions to the table in Appendix B of the NPRM are summarized in the following text. In addition, the notes to the table have been revised and renumbered to reflect the table's reorganization, and the text for several new notes has been added. The notes to the table will be discussed where appropriate in the discussion of the table below, and a discussion of the complete list of notes is also provided.

"Cushions, Mattresses" is a new category in the table which was formerly listed under the function of material column and included under the previously used category "Passenger seats, Sleeping and dining car components." See 62 FR 49823. Note 1 to the table which concerns flaming dripping or running is virtually identical to Note 1 as proposed in the NPRM. Note 2 is virtually identical to Note 5 as proposed in the NPRM, and pertains to ASTM E 662 smoke emission limits. The note renumbering provides consecutive numbering logic within the revised categories and function of materials.

As explained, FRA has been investigating the testing of assemblies of materials for performance in a fire, rather than individually testing the materials which comprise such assemblies, to more accurately reflect the interaction of materials in a fire. As part of the FRA-sponsored fire safety research program managed by the Volpe Center, six full-scale alternative seat assemblies being considered for the Amtrak high-speed train sets were tested in March, 1997, using a furniture calorimeter (ASTM E 1537).¹² The tests, jointly funded by FRA and Amtrak, used current Amtrak upholstery and different cushion foams; fire blocking layers were used in some trials. The test results showed that fire blocking layers

can significantly prevent fire ignition, and limit flame spread, fire growth, and smoke generation.

Note 3 permits the testing of seat and mattress assemblies incorporating heat release rate methods developed by consensus. Testing the performance of a seat or mattress assembly as an integrated unit, which is more representative of an actual condition, will be an alternative to individually testing the components that comprise the seat or mattress assembly. Seat assemblies and mattresses to be tested in this alternative manner shall use ASTM E 1537, "Standard Test Method for Fire Testing of Upholstered Seating Furniture," and shall use pass/fail criteria specified in California Technical Bulletin (CAL TB) 133, "Flammability Test Procedure for Seating Furniture for Use in Public Occupancies." CAL TB 133 has a successful history of use at state and municipal levels for high-hazard occupied places, such as nursing homes. Results of the March, 1997 tests using the ASTM E 1537 test procedure on seat assemblies being considered for Amtrak's high-speed trainsets showed that certain assemblies met the Cal TB 133 test criteria and exhibited a total lack of flame spread as well as low heat and smoke release. *Id.* In addition, data from Amtrak-funded tests showed that seat assemblies selected for use on Amtrak's high-speed trainsets passed both the ASTM D 3675 and FAA "oil burner" tests.

Acceptance of results using the alternative test approach in Note 3 for seat and mattress assemblies requires an accompanying fire hazard analysis for the specific application. This analysis may take the form of a specific system safety or fire protection analysis. The analysis must provide for necessary quality control of components used in these assemblies in actual day-to-day use. Quality control must be part of the daily operating plans for a system to ensure that individual substandard materials or components are not substituted within a given component assembly for parts having an identical function which are of acceptable quality. In conducting the fire hazard analysis, the operating environment within which seat and mattress assemblies qualified by assembly tests will be used must also be considered in relation to the risk of vandalism, puncture, cutting, or other acts or external forces which may expose the individual components of the assemblies. Seats and mattresses using certain types of foams must resist vandalism, puncture, cutting, and other acts and external forces. Robust blocking layer(s), resistant to both fire

(as used to meet FAA fire seat regulations), as well as to cutting and puncture, may be required. If used, these blocking layers must be applied in a manner which seals the seams (e.g., using bonding or ceramic thread with binding tape) and ensures that the foam does not leak or drip out and become exposed to ignition. The U.S. Coast Guard has issued a Navigation and Vessel Inspection Circular (NAVIC) for structural fire protection which permits the use of fire blockers if tested according to Cal TB 133; the NAVIC states that these materials have proven effective in protecting combustible foams from being involved in a fire.¹³

FRA notes that the ASTM E 1537 test procedure was not expressly referenced in the NPRM to allow testing of seat and mattress assemblies in this alternative manner. However, FRA did intend to permit use of alternative test procedures to demonstrate flammability and smoke emission characteristics of materials (upon special approval by FRA). See 62 FR 49803. FRA has, in effect, granted approval to any party to use the ASTM E 1537 test procedure to demonstrate the flammability and smoke emission characteristics of seat and mattress assemblies in accordance with the requirements of Note 3, in lieu of utilizing the testing methods otherwise required by the table in Appendix B.

Note 4 applies to seat cushion testing without upholstery and is identical to Note 9 as proposed in the NPRM. The note renumbering provides consecutive numbering logic within the revised categories and function of materials.

Note 5 requires the dynamic testing of seat cushions to address the retention of fire retardant characteristics of foams after the materials have been in service for a period of time. The precedent for the addition of Note 5 requiring the performance of an endurance test (ASTM D 3574, Test I₂ (Dynamic Fatigue Test by the Roller Shear at Constant Force) or Test I₃ (Dynamic Fatigue Test by Constant Force Pounding) both using Procedure B) for seat cushions is noted in the FTA notices relating to transit bus and van materials (58 FR 54250, 57 FR 1360). The concern that fire and smoke emission characteristics of materials may change over time will be more fully examined in the second phase of this rulemaking.

A new category title "Fabrics" includes seat upholstery, mattress ticking and covers, and curtains, as formerly included under the category

¹² "Passenger Rail Car Seat Fire Tests; ASTM E 1537/CAL TB 133." J. Zicherman and S. Markos. Draft Project Memorandum. December 1998. A copy of the report has been placed in the public docket for this rulemaking.

¹³ "Navigation and Inspection Circular No. 9-97. Guide to Structural Fire Protection." US Coast Guard. COMDTPUB P16700.4, October 31, 1997.

"Passenger seats, Sleeping and dining car components" in the table in Appendix B of the NPRM. The term "All" under function of material eliminates confusion as to what must be tested; if composed of fabric, window shades, draperies and wall coverings are required to be tested. The test procedure for purposes of the burn test is an FAA test found at 14 CFR part 25, Appendix F, Part I (vertical test). FRA has referenced this test procedure directly in the table and, thereby, removed the intermediate reference to 14 CFR § 25.853(a), as stated in the NPRM. Formerly, smoke emission requirements were limited to ≤ 250 for "coated" and ≤ 100 for "uncoated" fabrics at four minutes. The latter is typically PVC vinyl-based upholstery fabric. It was determined that a uniform criteria of ≤ 200 at four minutes for the smoke emission rate would be appropriate for both classes of fabrics, based in part on the known performance of the range of fabrics available, and the definition of coated and uncoated used by the ASTM, rather than the terms used in the above-cited report, "Rationale for Recommended Fire Safety Practices for Rail Transit Materials Selection," prepared by the Volpe Center in the early 1980s. Moreover, allowing a higher smoke emission performance criteria for coated fabrics—more than twice that allowed for uncoated fabrics—provides an inconsistent level of safety. In addition, the NFPA 130 Committee has accepted a recommendation for the identical change in its revised table requirements.

Notes 6 and 7, which pertain to washing and dry cleaning of materials, are almost identical to Notes 2 and 3 as proposed in the NPRM. These notes were renumbered to reflect consecutive numbering logic within the revised categories and function of materials. In addition, some upholstery materials must be dry cleaned. Accordingly, Note 7 applies to upholstery materials.

Note 8 was formerly the second sentence in Note 3 as proposed in the NPRM. However, since that sentence also included the words "washed," as well as "dry cleaned," this text was separated into a new Note 8 to ensure that the labeling requirement would be clearly understood to apply whatever cleaning method is used.

The new category "Vehicle Components" includes the majority of those materials formerly listed in the NPRM under the categories of "Panels," "Flooring" (except structural), thermal and acoustical "Insulation" (see discussion below), "Elastomers," "Exterior Plastic Components," and "Component Box Covers." Note 9

specifies, as a minimum, which combustible component materials must be tested, and is based on the components listed in the table in Appendix B of the NPRM.

Note 10 provides that testing of vehicle component miscellaneous, discontinuous small parts may not be necessary if such parts do not contribute materially to fire growth and the surface area of any individual small part is not greater than or equal to 16 square inches (100 cm²) in end use configuration. A fire hazard analysis is required that considers both the quantity of the parts (e.g., limited) and the location of the parts (e.g., at discontinuous, or isolated locations, or both), as well as the vulnerability of the parts to ignition and contribution to flame spread. As an example, grommets used on seats or window shades present an insignificant fire threat and could logically and safely be exempted from testing. Such small parts have been selectively exempted through the use of similar language in rail car specification documents for many years. On the other hand, other materials, such as those used to produce wire ties (of which hundreds or thousands may be included in a single car to mount power and low voltage cable bundles) shall not be exempted from testing, as specified in Note 11.

Note 11 relates to Note 10. If the surface area of any individual small part is less than 16 square inches (100 cm²) in end use configuration, such small part must be tested using the ASTM E 1354-97 test procedure, "Standard Test Method for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter" (e.g., Cone Calorimeter), unless such small part has been shown not to contribute materially to fire growth following an appropriate fire hazard analysis as specified in Note 10. ASTM E 1354 measures heat release rate (HRR) at a prescribed heat flux using oxygen depletion techniques and produces information including data for time of ignition and peak HRR. The quotient of these two parameters has been evaluated as part of the current FRA-funded NIST research program, as well as in other research, and has been shown to reliably predict ignitability (see Hirschler, 1992, 1995^{14 15}). Ignitability is also a parameter of

importance for certain small parts used in rail passenger cars. In addition, such parts, because of their small size and end uses, may be important from an ignition perspective, but not from a flame spread perspective. The pass/fail criterion:

$$t_{ig} / \dot{q}''_{max} \leq 1.5$$

is defined by the ratio of a given sample's sustained time in seconds (s) to ignition (t_{ig}) to its peak (maximum) heat release rate (\dot{q}''_{max}), as measured in the Cone Calorimeter under the stipulated exposure conditions. This quantity has been demonstrated to be a direct measure of a material's sensitivity to ignition, which is important since the class of parts referred to here will not, due to their small size, contribute markedly to fire growth and heat release. However, these parts may, if capable of showing sustained ignition, cause secondary ignition of surrounding materials subsequent to their own ignition. The required heat flux exposure of 50 kW/m² is sufficiently high to ignite materials which have a reasonable degree of intrinsic ignition resistance. The pass/fail criterion is based on relatively current research, including that conducted by NIST for passenger railroad materials cited earlier. FRA notes that the ASTM E 1354 test method was not expressly referenced in the NPRM. However, as identified by the Volpe Center during its fire safety research, this test procedure is an appropriate way to address the flammability and smoke emission characteristics of small parts and its use in this final rule complements the exemption from testing otherwise provided for small parts as specified in Note 10. Note 12 relates to Note 11. If, in accordance with Note 11, small miscellaneous, discontinuous parts are tested using ASTM E 1354 and an appropriate fire hazard analysis accompanies the test results, such small parts do not have to be tested for smoke generation using the ASTM E 662 test procedure.

Flexible cellular foam products not used for seat and mattress applications are now included in the separate "Vehicle Components" category to address the unique fire-related properties represented when used for arm rests, seatback "crash" padding, and thermal and acoustical insulation. The different armrest test requirements in Note 8 in the NPRM have been deleted. The differentiation is no longer necessary since the new Function of Material "Flexible Cellular Foams" requires that armrest foam material be tested according to ASTM D 3675. If

¹⁴ "Tools Available to Predict Full Scale Fire Performance of Furniture," Fire and Polymers II. Hirschler, M.M. Ed. G. L. Nelson, ACS Symp. Series 599. Ch. 36, pp. 593-608.

¹⁵ "Effect of a Single Furnishing Product on Fire Hazard in Actual Occupancies Based on Heat Release Rate." Hirschler, M.M. Proceedings, NFPRF Symposium and Fire Risk & Hazard, San Francisco, June 25-27, 1997.

hard plastic, the armrest test requirement is ASTM E 162. Tests conducted by NIST in 1983 of Amtrak interior materials showed that foam armrests assist flame spread from seat cushions to wall liners.

Thermal and acoustical insulation materials were previously included as a separate table category in the NPRM, with values identical to cushions and mattresses for flame spread (less than or equal to 25) and smoke emission (less than or equal to 100 for 1.5 minutes). (Thermal and acoustical insulation did not expressly contain a smoke emission criterion for 4 minutes in the NPRM, though intended to be less than or equal to 200.) Flexible cellular foam is sometimes used as thermal and acoustical insulation; if so used, the requirements remain unchanged (25, 100, and 200, respectively). Otherwise, the performance criteria for insulation materials are now 35, 100, and 200, respectively, to be consistent with other vehicle components.

Note 13 relates to the use of carpet on walls and ceilings and is virtually identical to Note 10 as proposed in the NPRM. Note 14 concerns floor coverings and is virtually identical to Note 7 as proposed in the NPRM.

Two items having identical test performance criteria relating to use of plastics in light transmitting assemblies under the function of material column in the table in Appendix B in the NPRM have been combined into a new "Light transmitting plastics" function of material column in the final rule. This terminology is consistent with use of the term for identical plastics in the construction industry and building codes. The test performance criteria remain unchanged from the NPRM. In addition, this category also provides for uniform acceptance criteria for transparent plastics used in windscreens, which formerly were not clearly addressed. Note 15 pertains to window glazing and is virtually identical to that in Note 4 as proposed in the NPRM. Renumbering of the note reflects consecutive numbering logic.

The separate category of "Elastomers" in the table in the NPRM has been included under the function of material column in the "Vehicle Components" category in the table in the final rule. As indicated in Note 16, the flammability test method for elastomers has been revised to reference ASTM C 1166, which has superseded ASTM C 542 as proposed in the NPRM. As specified in Note 16, only elastomeric parts with surface areas equal to or more than 16 square inches (100 cm²) in end use configuration are required to be tested using ASTM C 1166; elastomeric parts

with smaller surface areas need not be tested using ASTM C 1166. Accordingly, diaphragms, window gaskets, door nosing, and roof mats would continue to be tested; in addition, due to their size, flexible flat seat "springs" or suspension membranes are also required to be tested using ASTM C 1166. Testing requirements for miscellaneous small parts comprised of elastomeric composition having a surface area less than 16 square inches are discussed in Notes 10, 11, and 12.

The test requirement differentiation in Notes 10, 11, 12, and 16 according to part size is based on several factors. Many small miscellaneous parts used in car construction may be composed of elastomeric materials. These parts include cleats, blocks, abrasion and vibration damping pads. As such, these parts are frequently molded and are not readily available for testing in sizes required for either the ASTM E 162 or ASTM C 1166 test methods without undergoing special fabrication. Moreover, as noted in the discussion concerning Note 11, ASTM E 1354 is sensitive to ignition properties rather than flame spread. The later parameter would be a critical variable if such parts were used in applications with larger exposed surface areas.

The subject of "Wire and Cable" has been addressed by the addition of a new category in the table which requires smoke and flammability emission screening for wire and cable insulation. This is especially important due to the greater quantities of wire and cable used in electrically-powered intercity and commuter rail passenger cars. Fire-related tests and performance criteria for wire and cable insulation were not expressly included in the table proposed in Appendix B of the NPRM. The test methods of the IEEE, Insulated Cable Engineers Association (ICEA), National Electrical Manufacturers Association (NEMA), and Underwriters Laboratories Inc. (UL) specified in the final rule have long and successful histories of use, and have also been specified in the existing NFPA 130 requirements. In Note 17, one set of test methods is comprised of NEMA WC 3/ICEA S-19-1981, paragraph 6.19.6, and the second set is comprised of UL 44 and UL 83. The ICEA and NEMA jointly issued NEMA WC 3/ICEA S-19-1981, and it includes testing for both thermosetting wire insulation and for thermoplastic wire insulation. In Note 18, in addition to passing ANSI/IEEE Standard 383, section 2.5, the power cable must also demonstrate continued circuit integrity for 5 minutes to allow

continued short term operation of power when exposed to ignition.

FRA notes that, in its comments on the NPRM, the IEEE (like the NFPA) referred to the National Technology Transfer and Advancement Act of 1995, above, and the provision which requires, in general, that Federal agencies "use technical standards that are developed or adopted by voluntary consensus standards bodies." The IEEE cited its own development of voluntary consensus standards and their potential for integration in this rulemaking. In the second phase of the rulemaking, FRA will consider with the Working Group the appropriate use of other IEEE standards in this and other subject areas, in addition to the IEEE standard contained in this rule for fire safety.

The new category "Structural Components" addresses the structural integrity of floor assemblies and other structural elements. In Appendix B of the NPRM, only the performance of structural flooring was expressly addressed in the table itself and in the text of former Note 6. The first sentence of text relating to penetrations as proposed in Note 6 in the NPRM has been separated and inserted as Note 19 in the final rule. Note 19 requires that penetrations be tested as part of floor assemblies and other structural elements. The text in the second sentence of Note 6 as proposed in the NPRM specifically pertained to structural flooring assemblies, and it has been separated and inserted into Note 20 in the final rule.

Note 21 addresses the structural integrity of less well defined and design dependent rail car structural elements, other than floors. These structural elements may carry significant weight loads or have important fire barrier functions in protecting train occupants, or both. Examples include extensive HVAC or power-conditioning equipment installed on roofs or electrical equipment lockers, which may become involved in fires. Such fires may result from mechanical failures, electrical insulation breakdown, or from other hazards. Accordingly, Note 21 requires that portions of the vehicle body (other than floors but including the roof) which separate major ignition sources, or sources of fuel load from the vehicle interior, demonstrate fire endurance by a fire hazard analysis acceptable to the railroad.

The following summary lists the changes to the content of the notes and their numbering from the NPRM, reflecting both the table reorganization in the final rule as well as additional requirements: Note 1 is virtually identical to that in the NPRM. Note 2 is

virtually identical to Note 5 in the NPRM. Note 3 permits the testing of seat and mattress assemblies according to ASTM E 1537 using Cal TB 133 performance criteria. Note 4 is identical to Note 9 in the NPRM. Note 5 requires dynamic testing of seat cushions. Notes 6 and 7 are virtually identical to Notes 2 and 3 in the NPRM. The text of Note 8 is virtually identical to the second sentence of Note 3 in the NPRM. Note 9 lists vehicle component materials which must be tested, at a minimum. Note 10 allows a testing exception for materials used to fabricate small, discontinuous parts that will not contribute materially to fire growth in end use configuration, provided an appropriate fire hazard analysis is conducted. Note 11 requires that if the surface area of any individual small part is less than 16 square inches (100 cm²) in end use configuration, such small part must be tested using the ASTM E 1354 test procedure, unless such small part has been shown not to contribute materially to fire growth following an appropriate fire hazard analysis as specified in Note 10. Note 12 relates to Note 11. If, in accordance with Note 11, small parts are tested using ASTM E 1354 and an appropriate fire hazard analysis accompanies the test results, such small parts do not have to be tested for smoke generation using the ASTM E 662 test procedure. Note 13 is virtually identical to Note 10 in the NPRM. Note 14 is virtually identical to Note 7 in the NPRM. Note 15 is virtually identical to Note 4 in the NPRM. Note 16 provides test requirements for elastomeric materials greater than 16 square inches (100 cm²) in end use configuration and requires that, at a minimum, window gaskets, door nosings, diaphragms, and roof mats be tested. Notes 17 and 18 apply to wire and cable insulation. Note 19 is based on the last sentence of text formerly in Note 6 in the NPRM. Note 20 contains the first part of text of Note 6 in the NPRM. Note 21 addresses new test requirements for other structural components, such as car roofs and electrical cabinets, in addition to the floor assembly.

The list of standards contained in Appendix B, paragraph (c), in the NPRM has been revised and updated.

Appendix C—Suspension System Safety Performance Standards

The purpose of Appendix C is to prevent the occurrence of a variety of derailments due to forces on wheels. FRA has revised and clarified the requirements of this appendix based on comments received in response to the NPRM.

First, Bombardier commented that as proposed by FRA some differences existed between Appendix C and the requirements of the then-proposed Track Safety Standards, § 213.333. Consequently, Bombardier recommended that FRA change Appendix C to resolve the discrepancies; or eliminate Appendix C and reference the track safety standards' table of vehicle/track interaction performance limits in § 213.333 and incorporate Bombardier's proposed changes submitted as part of its September 15, 1997 hearing testimony on the track safety standards.

At the Working Group meeting in January 1998, a Volpe Center representative explained that the discrepancy between proposed Appendix C and the proposed track safety standards may be justifiable because Appendix C would apply only to new passenger equipment; whereas the then-proposed standards in the track safety rule would apply to both new and existing equipment. Appendix C's standards could therefore be necessarily stricter. In this regard, FRA has retained Appendix C and not simply referenced the track safety standards' table of vehicle/track interaction performance limits in 49 CFR § 213.333. Points 4 and 6 in Appendix C are not found in the track safety standards' table of vehicle/track interaction safety limits, and thus need to be retained in this passenger equipment rule to ensure the safety of new passenger equipment. However, FRA has otherwise reconciled Appendix C with the track safety standards' table in § 213.333.

Talgo, in its comments on proposed Appendix C, suggested that FRA reword the second paragraph in the Appendix to clarify that the performance standards are meant to apply to the average values for the parameters recorded during the time the train travels six feet. FRA has not adopted Talgo's suggestion, however. FRA intended that the performance standards apply to the maximum values for the parameters recorded to ensure that the passenger equipment operates within outer safety limits. Use of average values would mask real safety concerns.

Talgo also recommended that FRA define the method for signal filtering. FRA has adopted Talgo's recommendation and specified that, for purposes of this appendix, wheel/rail force measurements shall be processed through a low pass filter having a cut-off frequency of 25 Hz.

Finally, Talgo recommended that points 4 and 5 in the appendix be revised to acknowledge that they should not be applied to single-axle trucks.

FRA has not adopted Talgo's recommendation with respect to points 4 and 5, to the extent that an exemption for rail cars with single-axle trucks was sought. However, FRA provides the following clarification of points 4 and 5. Point 4 provides that the sum of the vertical wheel loads on one side of any truck shall not be less than or equal to 20 percent of the static vertical axle load, and that this shall include the effect of a crosswind allowance as specified by the railroad for the intended service of the equipment. Whether the rolling assembly is a single-axle or a double-axle truck, or whether solid or stub axles are used to configure the truck, the risk of wheel unloading is still present. If the vehicle is subjected to forces that reduce the static vertical load per truck side to 20% or less of the static axle load, an unsafe condition may exist. Point 4, therefore, requires that the sum of vertical wheel loads on any side of any truck (or any other suspension configuration per car end or between two car ends) be always greater than 20% of the static vertical axle load. For stub (non-solid) axles, an equivalent static vertical axle load may be computed by adding the static vertical wheel loads on opposite sides. If the rolling assembly has only one axle per suspension unit, as in the case of Talgo equipment, then any single wheel load is required to be always greater than 20% of its static value. As a result, point 4 of this appendix will constitute a more stringent requirement than provided in point 3. Point 5 of the appendix requires that the maximum truck side L/V ratio not exceed 0.6. If the rolling assembly has only one axle per suspension unit, as in the case of Talgo equipment, then the corresponding L/V ratio computed for each consecutive pair of axles shall be similarly limited to 0.6.

Appendix D to Part 238—Requirements for External Fuel Tanks on Tier I Locomotives

This appendix contains the performance requirements for external fuel tanks on Tier I locomotives, as adapted from AAR Recommended Practice (RP) 506, "Performance Requirements for Diesel Electric Locomotive Fuel Tanks," effective July 1, 1995. In incorporating this industry practice into Federal regulation, FRA has rephrased the text of RP-506 in part. Yet, no substantive change is intended, except as noted below. RP-506, a copy of which is available in the public docket of this rulemaking, is comprised of sections entitled "Scope," "Background," "Limitations," and "Structural Strength Requirements." Appendix D represents the section

entitled "Structural Strength Requirements," or Section 4 in RP-506.

FRA has not included Section 4.4 of RP-506 in Appendix D. Section 4.4 ("Fueling") states, "Internal structures of [the] tank must not impede the flow of fuel through the tank while fueling at a rate of 300 gpm [gallons per minute]." The rate at which a fuel tank may be fueled is only a safety concern in the broad sense that the fuel not spill from the tank while fueling. Of course, FRA recognizes that railroad fuel dispensers utilize automatic shut-off devices that will stop the flow of fuel before the fuel spills out of the tank if the fuel is dispensed too readily for the tank to process. The ability of the tank to accept fuel at a certain rate per minute therefore appears to be more of an operational concern than a safety concern for a railroad in that the process of fueling locomotives not be unnecessarily delayed.. As a result, FRA will not make Section 4.4. of RP-506 a safety requirement of this rule, even though a railroad is free to make it its own requirement in acquiring locomotives.

X. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures and is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a full regulatory evaluation of the rule (only a summary is provided below). This evaluation estimates the costs and consequences of the rule as well as its anticipated economic and safety benefits. The evaluation may be inspected and photocopied during

normal business hours by visiting the FRA Docket Clerk at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, in Washington, D.C. Photocopies may also be obtained by submitting a written request by mail to the FRA Docket Clerk at the Office of Chief Counsel, FRA, 1120 Vermont Ave, Mail Stop 10, Washington, D.C. 20590.

Certain requirements in the rule reflect current industry practices or restate existing regulations, or both. As a result, in calculating the costs of this rule, FRA has neither included the cost of those actions that would have been performed voluntarily in the absence of this rule, nor the costs of those actions that would have been required by the existing regulations that have been restated in this rule. Further, in calculating the benefits arising from this rule, FRA has not included as a benefit any good resulting from such actions.

FRA expects that overall this rule will save the passenger rail industry approximately \$20 million Net Present Value (NPV) over the next twenty years. Rail passengers are expected to benefit from reduced delays totaling approximately \$11 million (twenty-year NPV). FRA expects the NPV of the total twenty-year costs incurred associated with the rule to be \$68.5 million. The NPV of the total twenty-year savings expected to accrue to the industry from the rule is approximately \$87 million. For some passenger rail operators, the total costs incurred will exceed the total cost savings. For others, the cost savings will outweigh the costs. Expected safety benefits coupled with reduced passenger train delays outweigh the estimated costs of compliance with this rule.

The following tables present the estimated twenty-year costs and savings (NPV) associated with the specific requirements in this final rule. To the

best of FRA's ability, FRA has apportioned the total costs and savings in the following tables between Amtrak, commuter railroads, and the State of Washington to more precisely show the effects of this final rule on these different entities. In commenting on the NPRM, APTA had recommended that FRA segregate the costs and benefits to commuter railroads from those involving Amtrak—and not represent both Amtrak and commuter railroads together. FRA has separately identified the State of Washington in the tables below because of the unique concerns involving its operation of Talgo passenger equipment, discussed above in the preamble.

Ideally, FRA would separately show the costs and savings for commuter railroads from those involving Amtrak for each requirement in the rule. However, FRA cannot separate some of the twenty-year costs and savings of this rule with any degree of accuracy between Amtrak and commuter railroads, especially for passenger equipment that is not yet in service. For instance, FRA does not know how often Amtrak will order new equipment or what specific type of equipment that may be. To a certain extent, railroads will be able to control their level of expenditures in response to this rule by choosing to overhaul or rebuild equipment they own or by purchasing existing equipment from other railroads instead of ordering new equipment. Of course, FRA can more precisely apportion the costs and savings between Amtrak and commuter railroads for the inspection, testing, and maintenance requirements in this rule; those requirements will most significantly impact the existing fleet of passenger equipment, which is readily identifiable.

NPV 20-YEAR COSTS INCURRED

Requirement category	Amtrak	Commuter rail	Washington State	Total
Fire Safety—Materials	\$0	\$0	\$0	\$0
Certification	(*)			84,752
New Equipment				253,625
Existing Equipment				675,004
Inspect/Test/Maint.				142,056
Train Hardware & Software	0	0	0	0
Inspect/Test/Maint. Program:				
Existing Equipment				277,816
New Equipment				167,958
Training Program:				
Course Development				1,720,629
Exterior Mech. Inspect.				5,081,250
Interior Mech. Inspect.				3,408,940
Pre-Revenue Service Testing:				
Equip w/Prev. Op. Exp.				16,950
Equip w/Out Prev. Op. Exp.				233,373
Rim-Stamped Straight-Plate Wheels	0	0	0	0

NPV 20-YEAR COSTS INCURRED—Continued

Requirement category	Amtrak	Commuter rail	Washington State	Total
Emergency Lighting	0	0	0	0
Talgo—Risk Assessment	0	0	280,634	280,634
Anticlimber & Link to Car Body	0	129,296	0	129,296
Forward End Structures	0	8,190,145	0	8,190,145
Corner Posts	0	1,532,517	0	1,532,517
Rollover Strength				29,305
Side Structure	0	0	0	0
Truck to Car Body Attachment	0	0	0	0
Glazing				1,303,894
Fuel Tanks	0	0	0	0
Electrical System	0	0	0	0
Suspension System	0	0	0	0
Brake System—Ease of Inspection				32,179
Interior fittings and Surfaces				2,608,856
Emergency Window Exits	0	0	0	0
Doors—Manual Door Release	0	3,968,598	0	3,968,598
Automated Monitoring				30,503
Mvmt Defective Equip—Non Brakes				25,934
Mvmt Defective Equip—Brakes				735,249
Reporting and Tracking System	0	5,371,054	0	5,371,054
Daily Exterior Mech. Inspections	3,009,223	16,712,854	0	19,722,077
Qualified Maintenance Person	0	1,447,370		1,447,370
Daily Interior Mech. Inspections				10,861,361
Periodic Mechanical Inspection				201,639
Single Car Test	0	0	0	0
Total Costs				68,532,966

NPV 20-YEAR SAVINGS

Requirement category	Amtrak	Commuter rail	Washington State	Total
COT&S Interval Extensions:				
Coaches	\$0	\$9,227,510	\$0	\$9,227,510
MU locomotives	0	33,368,421	0	33,368,421
Cab cars	0	7,191,358	0	7,191,358
1,500-mile brake inspection	31,852,373	0	0	31,852,373
Class IA brake tests	0	4,360,701	0	4,360,701
Mvmt Defect Brakes—RR				632,592
Mvmt Defect Brakes—Passengers				11,368,651
Total Savings				98,019,605
Total Twenty-Year Net Impact: \$29,486,639 (Savings).				

(* In the above tables, a “—” indicates that total costs or savings, as appropriate, could not be apportioned between Amtrak, commuter railroads, and the State of Washington.)

FRA notes that as a result of the final rule's requirement to conduct fire safety analyses of existing passenger equipment, the analyses may indicate that modifications to existing equipment are necessary to reduce the level of risk of fire or smoke to an acceptable level. Although costs associated with performing the analyses are included in the calculations above, costs associated with performing any equipment modifications are not. If costs associated with equipment modifications are incurred, they will be incurred over the first four years of the rule and could total between \$8.75 million and \$14 million for existing equipment. If costs associated with installation of additional fire and smoke detection and

suppression systems are incurred for new equipment, total twenty-year costs (NPV) could increase by up to \$3.9 million. These costs are not included in the calculations presented above because FRA cannot predict with any degree of precision the results of the fire safety analyses. Should equipment modifications, and fire and smoke detection and suppression systems be required, the total net impact of the rule could be reduced from a savings of \$29.5 million to a savings of \$11.6 million (NPV). Rail operators would experience a minimal savings.

Intercity passenger and commuter railroads generally offer the travelling public one of the safest forms of transportation available. However, the

history of passenger train accidents shows that the potential for injury and loss of life is significant. Between January 1, 1990, and December 31, 1997, there were a total of 93 passenger fatalities on intercity passenger and commuter railroads, representing a total economic loss of \$251 million. Sixty-eight passenger fatalities occurred when the trains carrying the passengers were involved in derailments or collisions. FRA believes that it is reasonable to expect that the measures called for in this rule will prevent or mitigate the severity of casualties greater in value than the costs to rail carriers of implementing the requirements of this rule.

The unique circumstances surrounding each future passenger train accident will determine the ultimate effectiveness of this rule and FRA's other strategies to improve passenger rail safety. Similar accidents have unique characteristics which ultimately determine an accident's severity in terms of casualties. As a result, we cannot at this time forecast future accident scenarios with a level of precision that would allow us to predict the actual need for the particular measures in this rule. However, this rule protects railroad employees and passengers against known hazards that can be mitigated in a cost-effective manner. For each cost associated with a requirement in this rule, FRA has examined the potential safety benefits accruing from the requirement. Certain elements of the rule, such as the structural requirements, will directly improve safety by decreasing threats to life and property. Other elements of the rule will provide savings to the rail industry while maintaining or improving the industry's excellent safety record overall.

In its comments on the proposed rule, the NCDOT stated that the summary economic analysis contained in the NPRM did not include an analysis of the impact on individual States. The NCDOT believed the cost summary to be understated and not include an operator by operator analysis. The above summary does specify this rule's impact on Washington State. Further, as noted, a copy of the full regulatory evaluation of this rule is available through the FRA Docket Clerk. That evaluation does include, where appropriate, discussions of the rule's impact on particular railroads or groups of railroads. The evaluation also takes into consideration that individual States will contract with Amtrak for the provision of rail service on their behalf. In this regard, for example, a State may utilize Amtrak's inspection forces trained under the rule, and thus not have to train inspection forces on its own.

B. 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 conducted a regulatory flexibility assessment of this final rule's impact on small entities, and the assessment has been placed in the public docket for this rulemaking. FRA certifies that the final rule will not have a significant impact on a substantial number of small entities. This final rule affects intercity passenger and commuter railroads, rapid transit operations that operate on

the general system of transportation, and certain private car owners. FRA notes that the standards contained in this rule were developed in consultation with a Working Group that included Amtrak, individual commuter railroads, APTA, and the AAPRCO. APTA represents the interests of commuter railroads and rapid transit systems in regulatory matters. The AAPRCO represents the interests of private car owners in regulatory matters.

Except for private car owners, the entities impacted by the final rule are governmental jurisdictions, known as transit authorities, none of which are small for purposes of the prevailing law. The statutory definition of "small governmental jurisdictions" is a governmental entity that serves a population center of 50,000 or less. See 5 U.S.C. 601(5). The transit authorities subject to the requirements of this rule do not fall within the class established by statute. Nevertheless, FRA considered the impacts of this final rule on the smaller entities subject to the rule. Commuter railroads and rapid transit systems are part of larger transit organizations that receive Federal funds. The level of costs incurred by each organization should generally vary in proportion to either the size of the organization or the extent to which the organization purchases newly manufactured passenger equipment. For instance, railroads with fewer employees and passenger equipment will have lower costs associated with employee training and the inspection, testing, and maintenance of passenger equipment. FRA notes that this rule offers railroads the opportunity to experience savings in the areas of inspection, testing, and maintenance of passenger equipment. The extent of these savings will generally vary proportionally with the size of the fleet of each railroad.

FRA is making only certain requirements in this rule applicable to private cars that are operated in passenger trains subject to this rule. FRA considered the potential burdens associated with applying the various requirements in this rule to private car owners and operators. FRA is limiting the application of this rule only to those requirements necessary to ensure the safe operation of the passenger train in which the private cars operate, as well as the safety of railroad personnel handling or inspecting the cars. The economic impacts to private car owners are expected to be minimal, however. Among the provisions applicable to private cars are daily mechanical inspection requirements; brake inspection, testing, and

maintenance requirements; and a prohibition concerning rim-stamped straight-plate wheels on tread-braked passenger equipment.

FRA recognizes that private cars affected by this final rule are principally hauled by Amtrak, which imposes its own safety requirements on the operation of private cars. As a result, the daily exterior mechanical inspection requirements in this final rule, though new Federal requirements, are only minimally more stringent than the mechanical inspections currently performed by Amtrak on its own. The final rule does offer the flexibility to move equipment with power brake defects, as well as the flexibility to perform daily brake tests and mechanical inspections at locations best suited for performing such tests and inspections. To the extent that all passenger equipment is subject to daily exterior mechanical inspections, private cars will not be affected disproportionately.

Generally, the final rule requires that rim-stamped straight-plate wheels not be used as replacement wheels on tread-braked private cars. Amtrak has established a private car policy which does not allow the use of rim-stamped straight-plate wheels as replacement wheels on private cars. Further, Amtrak will decline to move any tread-braked private car with a rim-stamped straight-plate wheel after June 30, 2000. Because Amtrak holds private cars to standards as high or higher than those contained in this rule, there will be no additional economic impact imposed on private cars operated in Amtrak trains from this rule's rim-stamped straight-plate wheel provision. Private cars are also subject to provisions in this final rule concerning protection against personal injury, suspension system safety, safety appliances, and brake system safety. These requirements represent either current industry practice or current Federal safety requirements (which are being restated in this final rule).

Smaller passenger rail operations such as tourist, scenic, excursion, and historic railroads are exempt from this final rule. A joint FRA/industry Working Group will be developing recommendations regarding the applicability of FRA regulations, including this one, to tourist, scenic, historic, and excursion railroads. Based on that Working Group's recommendations, portions of the final rule may apply to some or all of these railroads.

C. Paperwork Reduction Act

This rule contains information collection requirements. FRA has

submitted these information collection requirements to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain the new or revised information collection requirements, or

both, and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
216.14—Special notice for repairs—passenger equipment.	19 railroads	12 forms	5 minutes	1 hour	\$39
238.1—Earlier application—rule requirements—sections 238.15, 238.17, 238.19, 238.107, 238.109.	19 railroads	15 notifications	45 minutes	11 hours	429
238.7—Waivers	19 railroads	12 waivers	2 hrs/25 hrs	70 hours	2,730
238.11—Penalties	19 railroads	1 falsified rept	15 minutes .....	.25 hr.	9
238.15—Movement of passenger equipment with power brake defects, and —Movement of passenger equipment with power brake defects develop en route.	19 railroads	1,000 cards/tags	3 minutes	50 hours	2,500
—Conditional requirement	19 railroads	288 cards/tags	3 minutes	14 hours	700
238.17—Movement of passenger equipment with other than power brake defects.	19 railroads	144 notifications	3 minutes	7 hours	350
—Movement of passenger equipment with safety appliance defects.	19 railroads	200 tags/cards	3 minutes	10 hours	340
238.19—Reporting and tracking defective passenger equipment.	19 railroads	76 tags	3 minutes	4 hours	136
—List of power brake repair points.	19 railroads	38 notifications	30 seconds	19 min.	11
—Amendments to list	19 railroads	N/A	Usual and customary procedure.	N/A	N/A
238.21/238.103/238.223(a)/238.309(2)/238.311(a)/238.405(a)/238.427(a):	1 railroad	1 list	2 hours	2 hours	78
—Petitions for special approval of alternative standard.	1 railroad	1 update	1 hour	1 hour	39
—Petitions for special approval of alternative compliance.	19 railroads	1 petition	16 hours	16 hours	624
—Petitions for special approval of pre-revenue service acceptance testing plan.	19 railroads	1 petition	120 hours	120 hours	4,680
—Comments on the petitions.	19 railroads	1 petition	24 hours	24 hours	936
238.103—Fire Safety:	Unknown	2 comments	1 hour	2 hours	140
—Plan	6 equipment manufacturers.	2.4 eq. design (5 yr. average).	200 hours	480 hours	33,360
—Subsequent equipment orders.	6 equipment manufacturers.	2.4 eq. design (5 yr. average).	60 years	144 hours	14,400
—Preliminary fire safety analysis.	19 railroads	19 documents	119 hours	2,264 hours	501,241
—Final fire safety analysis	18 railroads	6 documents (3 yr. average).	135 hours	811 hours	81,067
—Fire safety analysis on equipment transfer.	19 railroads	1 document	8 hours	8 hours	800
—Written procedures—fire safety system and fire safety equipment.	19 railroads	19 written procedures	80 hours	1,520 hours	106,400
238.105—Train hardware and software safety.	197 railroads	N/A	Usual and customary procedure.	N/A	N/A
238.107—Inspection, testing, and maintenance plan:					
—Plan	19 railroads	N/A	Usual and Customary procedure.	N/A	N/A
—Annual plan review by railroads.	19 railroads	19 reviews	60 hours	1,140 hours	44,460
238.109 Training, qualification, and designation program:					

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Training employees to perform brake-related inspections, tests, or maintenance.	17 railroads	N/A	Usual and customary procedure.	N/A	N/A
—Training employees to perform daily mechanical inspections.	19 railroads	6,020 trained employees/241 instructors.	2 hours	12,522 hours	421,410
—Development of training program.	19 railroads	19 programs	520 hours	9,880 hours	360,620
—Recordkeeping	19 railroads	6,020 records	3 minutes	301 hours	11,739
238.111—Pre-revenue service acceptance testing plan—equip. prev. in revenue service.	6 equipment manufacturers.	2.4 plans (5 yr. average).	16 hours	38 hours	2,641
—Pass equip. that has not been in revenue service in U.S.	6 equipment manufacturers.	2.4 plans (5 yr. average).	200 hours	480 hours	42,144
—Subsequent equipment orders.	6 equipment manufacturers.	2.4 plans (5 yr. average).	60 hours	144 hours	11,472
—Major upgrades/intro. new tech.—Tier II.	1 equipment manuf ...	None likely	N/A	N/A	N/A
238.201—Alternative compliance.	19 railroads	Incl. in 238.21	Inc. 238.21	Incl. 238.21	Incl. 238.21
238.203—Static end strength:					
—Grandfathering non-compliant equip.	19 railroads	1 petition	300 hours	300 hours	21,000
—Comment	Unkown	6 comments	20 hours	120 hours	8,400
238.211—Collision posts	19 railroads	Incl. in 238.21	Incl. 238.21	Incl. 238.21	Inc. 238.21
238.223—Locomotive fuel tanks—alt. std.	19 railroads	Incl. in 238.21	Incl. 238.21	Incl. 238.21	Inc 238.21
238.231—Brake system—identified & marked.	2 brake manufacturers.	N/A	N/A	Usual and cust.	N/A
238.237—Automated monitoring:					
—Alerter/Deadman control—documentation.	19 railroads	19 documents	2 hours	38 hours	1,482
—Defective alerter/Deadman control.	19 railroads	100 tags	3 minutes	5 hours	250
238.301—Scope—requirements—earlier application.	19 railroads	Incl. in 238.1	Incl. in 238.1	Incl. in 238.1	Incl. 238.1
238.303—Exterior calendar day mechanical inspection of passenger equipment—door and cover plates guarding high voltage equip.	N/A	N/A	Usual and customary procedure.	N/A	N/A
—MU locomotives w/ inoperative dyn. brakes.	19 railroads	50 tags/cards	3 minutes	3 hours	150
—Conventional locos. w/ inoper. dyn. brakes.	19 railroads	50 tags/cards	3 minutes	3 hours	150
—Written notice—inoperative dyn. brakes.	19 railroads	25 written not	3 minutes	1 hour	34
—Records—ext. calendar day mech. insp.	19 railroads	2,022,436 recd	1 minute	33,707 hours	1,146,038
238.305—Interior calendar day mechanical inspection of passenger cars:					
—Stenciling or marking emergency brake valve.	N/A	N/A	Usual and customary procedure.	N/A	N/A
—Stenciling or marking high voltage equipment.	N/A	N/A	Usual and customary procedure.	N/A	N/A
—Tagging of defective doors.	10 railroads	600 tags	1 minute	10 hours	340
—Safety related signage ..	N/A	N/A	Usual and customery customary procedure.	N/A	N/A
—Records	19 railroads	1,866,904 recds	1 minute	31,115 hours	1,057,910
238.307—Periodic mechanical inspection of passenger cars:					
—Written notification—alt. periodic insp. int.	5 railroads	5 notifications	5 hours	25 hours	975
—Switches—markings	N/A	N/A	Usual and customary procedure.	N/A	N/A

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Records	6 railroads	15 records	3 minutes .....	.75 hours	29
—Detailed documenta- tion—alt. insp. interval.	5 railroads	5 documents	100 hours	500 hours	19,500
238.309—Alternative mainte- nance proc.	19 railroads	Incl. in 238.21	Incl. in 238.21	Incl. in 238.21	Inc. 238.21
—Records of periodic maintenance.	N/A	N/A	Usual and customary procedure.	N/A	N/A
238.311—Single car test—alt. procedure.	19 railroads	Incl. in 238.21	Incl. in 238.21	Incl. in 238.21	Inc.—238.21
—Tagging to indicate need—single car test.	19 railroads	25 tags	3 minutes	1 hour	34
238.313—Class I brake test ...	N/A	N/A	Usual and customary procedure.	N/A	N/A
—Documentation—test al- ready performed.	.....	.....	.....	.....	.....
—Qualif. maint. Person.— statement in cab.	.....	.....	.....	.....	.....
238.315—Class IA brake test:	.....	.....	.....	.....	.....
—Brake pipe pressure— communications.	19 railroads	365,000 comm	3 seconds	304 hours	10,336
—Communicating signal system—tests.	19 tests	365,000 tests	15 seconds	1,521 hours	51,714
238.317—Class II Brake Test:	.....	.....	.....	.....	.....
—Brake pipe pressure— communications.	19 railroads	365,000 comm	3 seconds	304 hours	10,336
—Communicating signal system—tests.	19 railroads	365,000 tests	15 seconds	1,521 hours	51,714
238.403—Crash energy man- agement requirements.	1 railroad	1 design	120 hours	120 hours	12,000
238.405—Longitudinal static compressive.	1 railroad	Incl. in 238.21	Incl.—238.21	Incl.—238.21	Inc.—238.21
238.421—Gazing:	.....	.....	.....	.....	.....
—Marking of glazing ma- terial.	N/A	N/A	Usual and customary procedure.	N/A	N/A
—Stenciling requirement ..	N/A	N/A	Usual and customary procedure.	N/A	N/A
238.423—Fuel tanks—equiv. level of safety.	N/A	Incl. in 238.21	Incl. in 238.21	Incl. in 238.21	Inc.—238.21
238.427—Suspension sys- tem—alt. stds.	N/A	Incl. in 238.21	Incl. in 238.21	Incl. in 238.21	Incl.— 238.445
—Hunting oscillations— alarms to train oper.	1 railroad	Incl. in 238.445	Inc.—238.445	Inc.—238.445	In.—238.445
238.431—Brake system	1 railroad	1 analysis	40 hours	40 hours	1,560
—Brake system failures ...	1 railroad	Incl. 238.445	Incl. 238.445	Incl. 238.445	In 238.445
—Wheel slide alarms	1 railroad	Incl. 238.445	Incl. 238.445	Incl. 238.445	In 238.445
238.437—Emergency commu- nication.	3 car manufacturers ..	3 instructions	1 hour	3 hours	102
238.441—Emergency roof en- trance location.	3 car manufacturers ..	16 cars marked	15 minutes	4 hours	136
—Markings .....	.....	.....	.....	.....	.....
238.445—Automated moni- toring.	1 railroad	200 alerts	1 second	3 minutes	2
—Self test feature—notifi- cations to train operator.	1 railroad	6,300 notifications	1 second	2 hours	68
238.447—Train operator's con- trols and power car cab lay- out.	N/A	N/A	Usual and customary procedure.	N/A	N/A
238.503—Inspection, testing, and maintenance require- ments:	.....	.....	.....	.....	.....
238.505—Program approval procedures:	.....	.....	.....	.....	.....
—Submission of program	1 railroad	1 program	80 hours	80 hours	3,120
—Amendments to pro- gram.	1 railroad	1 amendment	8 hours	8 hours	312
—Comments	4 unions/individuals ...	4 comments	1 hour	4 hours	276
—Approval	N/A	N/A	No disapprovals ex- pected at this time.	N/A	N/A
238.603—Safety planing re- quirements—Process to in- troduce new technology.	1 railroad	1 safety plan	100 hours	100 hours	3,900
Appendix B to Part 238—label- ing requirement.	5–6 seat manufactur- ers.	N/A	Usual customary pro- cedure.	N/A	N/A

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Seat/Mattress assemblies—fire haz. analysis.	5–6 manuf	Incl. 238.103	Incl. 238.103	Incl. 238.103	In 238.103
—Disc. small parts—fire hazard analysis.	5–6 manuf	Incl. in 238.103	Incl. 238.103	Incl. 238.103	In238.103
—Surface any small part—fire haz. analysis.	5–6 manuf	Incl. in 238.103	Incl. 238.103	Incl. 238.103	In238.103
—Small elastomers/misc. parts—fire haz. anal.	5–6 manuf	Incl. in 238.103	Incl. 238.103	Incl. 238.103	In238.103
—Portions vehicle body—fire hazard analysis.	5–6 manuf	Incl. in 238.103	Incl. 238.103	Incl. 238.103	In238.103

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB contact Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493-6292) or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590 (telephone: (202) 493-6133).

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The information collection requirements contained in this rule have been approved under OMB control number 2130-0544.

D. Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

E. Federalism Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The fundamental policy decision providing that Federal regulations should govern aspects of service provided by municipal and public benefit corporations (or agencies) of State governments is embodied in the

statute quoted above (49 U.S.C. 20133). Further, FRA has consulted with commuter railroad authorities in developing this rule.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Sec. 201. Section 202 of the Act further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement . . .” detailing the effect on State, local and tribal governments and the private sector. The final rules issued today will not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of a statement was not required.

G. Effects on the Year 2000 Computer Problem

This rule does not mandate business process changes nor require modifications to computer systems that will detract from resources railroads will apply toward addressing any possible Year 2000 computer problems. Although business process changes and modifications to computer systems may occur as this rule is implemented, railroads would only voluntarily make such changes and modifications before the year 2000.

Implementation of certain inspection, testing, and maintenance requirements,

as well as recordkeeping and tracking of defective equipment requirements, would require use of the same resources railroads will apply toward resolving Year 2000 computer problems. However, FRA will not require that such implementation occur before July, 2000. FRA will apply requirements for inspection, testing, and maintenance of equipment, and recordkeeping and tracking, at an earlier date only to those railroads that indicate a desire for this to occur. Because certain of the requirements for inspection, testing, and maintenance offer railroads an opportunity to achieve efficiencies and savings, some railroads may voluntarily choose to have these requirements applied to them earlier. FRA notes that its implementation schedule for inspection, testing, and maintenance requirements, as well as recordkeeping and tracking requirements, was also developed taking into consideration the time generally needed for railroads to develop maintenance programs and implement training requirements as required by this rule.

XI. List of Subjects

49 CFR Part 216

Penalties, Railroad safety, Reporting and recordkeeping requirements, Special notice for repairs.

49 CFR Part 223

Glass and glass products, Glazing, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Locomotives, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety, Safety appliances.

49 CFR Part 232

Penalties, Power brakes, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Incorporation by reference, Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 216—[AMENDED]

1. The authority citation for part 216 is revised to read as follows:

Authority: 49 U.S.C. 20102–04, 20111, 20133, 20137–38, 20141, 20143, 20301–02, 20701–02, 21301–02, 21304; 49 CFR 1.49(c), (m).

2. Section 216.1(a) is revised to read as follows:

§ 216.1 Application.

(a) This part applies, according to its terms, to each railroad that uses or operates—

(1) A railroad freight car subject to part 215 of this chapter;

(2) A locomotive subject to 49 U.S.C. chapter 207 (49 U.S.C. 20701–03); or

(3) Railroad passenger equipment subject to part 238 of this chapter.

* * * * *

§ 216.3 [Amended]

3. Section 216.3(b) is amended by removing the phrase “section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435)” and adding in its place the phrase “49 U.S.C. 20105”.

§ 216.5 [Amended]

4. Section 216.5(c) is amended by adding after “216.13,”: “216.14,”.

§ 216.13 [Amended]

5. The first sentence of § 216.13(a) is removed and a new sentence is added in its place to read as follows: “When an FRA Motive Power and Equipment Inspector or State Equipment Inspector determines a locomotive is not safe to operate in the service to which it is put, whether by reason of nonconformity with the FRA Railroad Locomotive Safety Standards set forth in part 229 of this chapter or the FRA Railroad Locomotive Inspection Regulations set forth in part 230 of this chapter or by reason of any other condition rendering the locomotive unsafe, he or she will notify the railroad in writing that the locomotive is not in serviceable condition.”

5a. The third sentence of § 216.13(a) is amended by removing the phrase “part 230” and adding in its place the phrase “parts 229 and 230”.

6. Section 216.14 is added to read as follows:

§ 216.14 Special notice for repairs—passenger equipment.

(a) When an FRA Motive Power and Equipment Inspector or a State Equipment Inspector determines that railroad passenger equipment is not in conformity with one or more of the requirements of the FRA Passenger Equipment Safety Standards set forth in part 238 of this chapter and that it is unsafe for further service, he or she will issue a written Special Notice to the railroad that the equipment is not in serviceable condition. The Special Notice describes the defect or defects that cause the equipment to be in unserviceable condition. After receipt of the Special Notice, the railroad shall remove the equipment from service until it is restored to serviceable condition. The equipment may not be deemed in serviceable condition until it complies with all applicable requirements of part 238 of this chapter.

(b) The railroad shall notify in writing the FRA Regional Administrator for the FRA region in which the Special Notice was issued when the equipment is returned to service, specifying the repairs completed.

(c) Railroad passenger equipment subject to a Special Notice may be moved from the place where it was found to be unsafe for further service to the nearest available point where the equipment can be repaired, if such movement is necessary to make the repairs. However, the movement is subject to the further restrictions of §§ 238.15 and 238.17 of this chapter.

§ 216.17 [Amended]

7. Section 216.17(a) is amended as follows:

a. By adding, after “216.13”, “216.14,”;

b. By adding, after the word “locomotive,” in the third sentence, the phrase “railroad passenger equipment,”; and

c. By revising the fifth sentence to read as follows:

“If upon reinspection, the railroad freight car, locomotive, or passenger equipment is found to be in serviceable condition, or the track is found to comply with the requirements for the class at which it was previously operated by the railroad, the FRA Regional Administrator or his or her agent will immediately notify the railroad, whereupon the restrictions of the Special Notice cease to be effective.”

Subpart B—[Amended]

8. In subpart B of part 216, the phrases “the FRA Regional Director for Railroad Safety”, “the FRA Regional Director of Railroad Safety”, “a Regional Director” and “the Regional Director” are removed, and the phrase “the FRA Regional Administrator” is added in their place.

PART 223—[AMENDED]

9. The authority citation for part 223 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20701–20702, 21301–02, 21304; 49 CFR 1.49(c), (m).

10. Section 223.8 is added to subpart B to read as follows:

§ 223.8 Additional requirements for passenger equipment.

In addition to the requirements contained in this part, requirements for emergency window exits and window safety glazing on passenger equipment, as defined in § 238.5 of this chapter, are also found in part 238 of this chapter.

PART 229—[AMENDED]

11. The authority citation for part 229 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 49 CFR 1.49(c), (m).

12. Section 229.3 is amended by revising paragraph (a) and adding new paragraphs (c), (d), and (e) to read as follows:

§ 229.3 Applicability.

(a) Except as provided in paragraphs (b) through (e) of this section, this part applies to all standard gage railroads.

(b) * * *

(c) Paragraphs (a) and (b) of § 229.125 do not apply to Tier II passenger equipment as defined in § 238.5 of this chapter (*i.e.*, passenger equipment operating at speeds exceeding 125 mph but not exceeding 150 mph).

(d) On or after November 8, 1999, paragraphs (a)(1) and (b)(1) of § 229.141 do not apply to “passenger equipment” as defined in § 238.5 of this chapter, unless such equipment is excluded from the requirements of §§ 238.203 through 238.219, and § 238.223 of this chapter by operation of § 238.201(a)(2) of this chapter.

(e) Paragraphs (a)(2) through (a)(4), and (b)(2) through (b)(4) of § 229.141 do not apply to “passenger equipment” as defined in § 238.5 of this chapter that is placed in service for the first time on or after September 8, 2000, unless such equipment is excluded from the requirements of §§ 238.203 through

238.219, and § 238.223 of this chapter by operation of § 238.201(a)(2) of this chapter.

PART 231—[AMENDED]

13. The authority citation for part 231 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20131, 20301–03, 21301–02, 21304; 49 CFR 1.49(c), (m).

14. Section 231.0 is amended by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; by revising paragraph (a); and by adding a new paragraph (c) to read as follows:

§ 231.0 Applicability and penalties.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to all standard gage railroads.

(b) * * *

(c) Except for the provisions governing uncoupling devices, this part does not apply to Tier II passenger equipment as defined in § 238.5 of this chapter (*i.e.*, passenger equipment operating at speeds exceeding 125 mph but not exceeding 150 mph).

* * * * *

PART 232—[AMENDED]

15. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20141, 20301–03, 20306, 21301–02, 21304; 49 CFR 1.49 (c), (m).

16. Section 232.0 is amended by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; by revising paragraph (a); and by adding a new paragraph (c) to read as follows:

§ 232.0 Applicability and penalties.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to all standard gage railroads.

(b) * * *

(c) Except for §§ 232.2 and 232.21 through 232.25, this part does not apply to a “passenger train” or “passenger equipment” as defined in § 238.5 of this chapter that is subject to the inspection and testing requirements contained in part 238 of this chapter.

* * * * *

17. Part 238 is added to read as follows:

PART 238—PASSENGER EQUIPMENT SAFETY STANDARDS

Subpart A—General

Sec.

238.1 Purpose and scope.

238.3 Applicability.

238.5 Definitions.

238.7 Waivers.

238.9 Responsibility for compliance.

238.11 Civil penalties.

238.13 Preemptive effect.

238.15 Movement of passenger equipment with power brake defects.

238.17 Movement of passenger equipment with other than power brake defects.

238.19 Reporting and tracking defective passenger equipment.

238.21 Special approval procedure.

238.23 Information collection.

Subpart B—Safety Planning and General Requirements

238.101 Scope.

238.103 Fire safety.

238.105 Train hardware and software safety.

238.107 Inspection, testing, and maintenance plan.

238.109 Training, qualification, and designation program.

238.111 Pre-revenue service acceptance testing plan.

238.113 Emergency window exits.

238.115 Emergency lighting.

238.117 Protection against personal injury.

238.119 Rim-stamped straight-plate wheels.

Subpart C—Specific Requirements for Tier I Passenger Equipment

238.201 Scope/alternative compliance.

238.203 Static end strength.

238.205 Anti-climbing mechanism.

238.207 Link between coupling mechanism and car body.

238.209 Forward-facing end structure of locomotives.

238.211 Collision posts.

238.213 Corner posts.

238.215 Rollover strength.

238.217 Side structure.

238.219 Truck-to-car-body attachment.

238.221 Glazing.

238.223 Locomotive fuel tanks.

238.225 Electrical system.

238.227 Suspension system.

238.229 Safety appliances.

238.231 Brake system.

238.233 Interior fittings and surfaces.

238.235 Doors.

238.237 Automated monitoring.

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

238.301 Scope.

238.303 Exterior calendar day mechanical inspection of passenger equipment.

238.305 Interior calendar day mechanical inspection of passenger cars.

238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

238.309 Periodic brake equipment maintenance.

238.311 Single car test.

238.313 Class I brake test.

238.315 Class IA brake test.

238.317 Class II brake test.

238.319 Running brake test.

Subpart E—Specific Requirements for Tier II Passenger Equipment

238.401 Scope.

238.403 Crash energy management.

238.405 Longitudinal static compressive strength.

238.407 Anti-climbing mechanism.

238.409 Forward end structures of power car cabs.

238.411 Rear end structures of power car cabs.

238.413 End structures of trailer cars.

238.415 Rollover strength.

238.417 Side loads.

238.419 Truck-to-car-body and truck component attachment.

238.421 Glazing.

238.423 Fuel tanks.

238.425 Electrical system.

238.427 Suspension system.

238.429 Safety appliances.

238.431 Brake system.

238.433 Draft system.

238.435 Interior fittings and surfaces.

238.437 Emergency communication.

238.439 Doors.

238.441 Emergency roof entrance location.

238.443 Headlights.

238.445 Automated monitoring.

238.447 Train operator's controls and power car cab layout.

Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment

238.501 Scope.

238.503 Inspection, testing, and maintenance requirements.

238.505 Program approval procedure.

Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment

238.601 Scope.

238.603 Safety planning requirements.

Appendix A to Part 238—Schedule of Civil Penalties

Appendix B—Test Methods and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

Appendix C to Part 238—Suspension System Safety Performance Standards

Appendix D to Part 238—Requirements for External Fuel Tanks on Tier I Locomotives

Appendix E to Part 238—General Principles of Reliability-Based Maintenance Programs

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–03, 20306, and 20701–02; 49 CFR 1.49.

Subpart A—General

§ 238.1 Purpose and scope.

(a) The purpose of this part is to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or the general public; and to

mitigate the consequences of such occurrences to the extent they cannot be prevented.

(b) This part prescribes minimum Federal safety standards for railroad passenger equipment. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

(c) Railroads to which this part applies shall be responsible for compliance with all of the requirements contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D of this part effective July 12, 2001.

(1) A railroad may request earlier application of the requirements contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D upon written notification to FRA's Associate Administrator for Safety. Such a request shall indicate the railroad's readiness and ability to comply with all of the provisions referenced in paragraph (c) introductory text of this section.

(2) Except for paragraphs (b) and (c) of § 238.309, a railroad may specifically request earlier application of the maintenance and testing provisions contained in §§ 238.309 and 238.311 simultaneously. In order to request earlier application of these two sections, the railroad shall indicate its readiness and ability to comply with all of the provisions contained in both of those sections.

(3) Paragraphs (b) and (c) of § 238.309 shall apply beginning September 9, 1999.

§ 238.3 Applicability.

(a) Except as provided in paragraph (c) of this section, this part applies to all:

(1) Railroads that operate intercity or commuter passenger train service on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger train service in a metropolitan or suburban area as described by 49 U.S.C. 20102(1), including public authorities operating passenger train service.

(b) Railroads that permit to be used or hauled on their lines passenger equipment subject to this part, in violation of a power brake provision of this part or a safety appliance provision of this part, are subject to the power brake and safety appliance provisions of this part with respect to such operations.

(c) This part does not apply to:

(1) Rapid transit operations in an urban area that are not connected to the

general railroad system of transportation;

(2) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation;

(3) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation; or

(4) Circus trains.

§ 238.5 Definitions.

As used in this part—

AAR means the Association of American Railroads.

APTA means the American Public Transit Association.

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alerter means a device or system installed in the locomotive cab to promote continuous, active locomotive engineer attentiveness by monitoring select locomotive engineer-induced control activities. If fluctuation of a monitored locomotive engineer-induced control activity is not detected within a predetermined time, a sequence of audible and visual alarms is activated so as 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 that brings the locomotive or train to a stop.

Anti-climbing mechanism means the parts at the ends of adjoining vehicles in a train that are designed to engage when subjected to large buff loads to prevent the override of one vehicle by another.

Bind means restrict the intended movement of one or more brake system components by obstruction, increased friction, or reduced clearance.

Block of cars means one car or multiple cars in a solid unit coupled together for the purpose of being added to, or removed from, a train as a solid unit.

Brake, air or power brake 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 rail car or locomotive 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 means a train braking system whereby the kinetic energy of a

moving train is used to generate electric current at the locomotive traction motors, which is then dissipated through banks of resistor grids or back into the catenary or third rail system.

Brake, effective means a brake that is capable of producing its required design retarding force on the train. A rail car's air brake is not considered effective if its piston travel is in excess of the maximum prescribed limits.

Brake indicator means a device, actuated by brake cylinder pressure, which indicates whether brakes are applied or released.

Brake, inoperative means a primary brake that, for any reason, no longer applies or releases as intended or is otherwise ineffective.

Brake, on-tread friction means a braking system that uses a brake shoe that acts on the tread of the wheel to retard the vehicle.

Brake, parking or hand brake means a brake that can be applied and released by hand to prevent movement of a stationary rail car or locomotive.

Brake pipe means the system of piping (including branch pipes, angle cocks, cutout cocks, dirt collectors, hoses, and hose couplings) used for connecting locomotives and all rail cars for the passage of air to control the locomotive and car brakes.

Brake, power means "air brake" as that term is defined in this section.

Brake, primary means those components of the train brake system necessary to stop the train within the signal spacing distance without thermal damage to friction braking surfaces.

Brake, secondary means those components of the train brake system which develop supplemental brake retarding force that is not needed to stop the train within signal spacing distances or to prevent thermal damage to friction braking surfaces.

Brake shoes or pads aligned with tread or disc means that the surface of the brake shoe or pad, respectively, engages the surface of the wheel tread or disc, respectively, to prevent localized thermal stress.

Braking system, blended means a braking system where the primary brake and one or more secondary brakes are automatically combined to stop the train. If the secondary brakes are unavailable, the blended brake uses the primary brake alone to stop the train.

Calendar day means a time period running from one midnight to the next midnight on a given date.

Class I brake test means a complete passenger train brake system test and inspection (as further specified in § 238.313) performed by a qualified

maintenance person to ensure that the air brake system is 100 percent effective.

Class IA brake test means a test and inspection (as further specified in § 238.315) performed by a qualified person of the air brake system on each car in a passenger train to ensure that the brakes apply and release on each car in the train in response to train line commands.

Class II brake test means a test and inspection (as further specified in § 238.317) performed by a qualified person of brake pipe integrity and continuity from the controlling locomotive to the rear unit of a passenger train.

Collision posts means structural members of the end structures of a vehicle that extend vertically from the underframe to which they are securely attached and that provide protection to occupied compartments from an object penetrating the vehicle during a collision.

Control valves means that part of the air brake equipment on each rail car or locomotive that controls the charging, application, and release of the air brakes, in response to train line commands.

Corner posts means structural members located at the intersection of the front or rear surface with the side surface of a rail vehicle and which extend vertically from the underframe to the roof. Corner posts may be combined with collision posts to become part of the end structure.

Crack means a fracture without complete separation into parts, except that, in a casting, a shrinkage crack or hot tear that does not significantly diminish the strength of the member is not a crack.

Crash energy management means an approach to the design of rail passenger 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 crewmembers 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 manner, 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 anti-climbing resistance and to reduce the risk of train buckling during a collision.

Crash refuge means a volume with structural strength designed to maximize the survivability of

crewmembers stationed in the locomotive cab during a collision.

Crewmember means a railroad employee called to perform service covered by the Federal hours of service laws at 49 U.S.C. 21103 and subject to the railroad's operating rules and program of operational tests and inspections required in § 217.9 and § 217.11 of this chapter.

Critical buckling stress means the minimum stress necessary to initiate buckling of a structural member.

Emergency brake application means an irretrievable brake application resulting in the maximum retarding force available from the train brake system.

Emergency window means that segment of a side-facing glazing panel which has been designed to permit rapid and easy removal in an emergency situation.

End structure means the main support structure projecting upward from the underframe of a locomotive, passenger car, or other rail vehicle. The end structure is securely attached to the underframe at each end of a rail vehicle.

50th -percentile adult male means a person weighing 164 pounds (plus or minus 3 pounds) and possessing the following dimensions: erect sitting height: 35.7 inches (plus or minus 0.1 inch); hip breadth (sitting): 14.7 inches (plus or minus 0.7 inch); hip circumference (sitting): 42 inches; waist circumference (sitting): 32 inches (plus or minus 0.6 inch); chest depth: 9.3 inches (plus or minus 0.2 inch); and chest circumference: 37.4 inches (plus or minus 0.6 inch).

Foul means restrict the intended movement of one or more brake system components because the component is snagged, entangled, or twisted.

FRA means the Federal Railroad Administration.

Fuel tank, external means a fuel containment volume that extends outside the car body structure of a locomotive.

Fuel tank, internal means a fuel containment volume that does not extend outside the car body structure of a locomotive.

Full-height collision post, corner post, or side frame post means any vertical framing member in the rail car body structure that spans the distance between the underframe and the roof at the car body section where the post is located. For collision posts located at the approximate third points laterally of an end frame, the term "full-height" applies to posts that extend and connect to supporting structural members in the roof at the location of the posts, or to a beam connected to the top of the end-

frame and supported by the roof rails (or anti-telescoping plate), or to both.

Full service application means a brake application which results in a brake cylinder pressure at the service limiting valve setting or equivalent.

Glazing, end-facing means a glazing panel located where a line perpendicular to the exterior surface of the panel makes an 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 considered end-facing glazing.

Glazing, exterior means a glazing panel that is an integral part of the exterior skin of a rail vehicle and has a surface exposed to the outside environment.

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.

Handrails means safety appliances installed on either side of a rail vehicle's exterior doors to assist passengers and crewmembers to safely board and depart the vehicle.

Head end power means power generated on board the locomotive of a passenger train used for purposes other than propelling the train, such as cooking, heating, illumination, ventilation and air conditioning.

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 be considered in passenger or in revenue service.

In service, when used in connection with passenger equipment, means:

(1) Passenger equipment subject to this part that is in passenger or revenue service; and

(2) All other passenger equipment subject to this part, unless the passenger equipment:

(i) Is being handled in accordance with §§ 238.15, 238.17, 238.305(c)(5), or 238.503(f), as applicable;

(ii) Is in a repair shop or on a repair track;

(iii) Is on a storage track and is not carrying passengers; or

(iv) Has been delivered in interchange but has not been accepted by the receiving railroad.

Interior fitting means any component in the passenger compartment which is mounted to the floor, ceiling, sidewalls, or end walls and 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 side and end walls, floors, door pockets, or ceiling lining materials, for example.

Lateral means the horizontal direction perpendicular to the direction of travel.

Locomotive means a piece of on-track rail equipment, other than hi-rail, specialized maintenance, or other similar equipment, which may consist of one or more units operated from a single control stand with one or more propelling motors designed for moving other passenger equipment; with one or more propelling motors designed to transport freight or passenger traffic, or both; or without propelling motors but with one or more control stands. This term does not include a locomotive propelled by steam power unless it is used to haul an intercity or commuter passenger train. Nor does this term include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

Locomotive cab means the compartment or space on board a locomotive where the control stand is located and which is normally occupied by the engineer when the locomotive is operated.

Locomotive, cab car means rail rolling equipment intended to provide transportation for members of the general public that is without propelling motors but equipped with one or more control stands.

Locomotive, controlling means the locomotive from which the locomotive engineer exercises control over the train.

Locomotive, MU means rail rolling equipment self-propelled by any power source and intended to provide transportation for members of the general public; however, this term does not include an MU locomotive propelled by steam power unless it is used to haul an intercity or commuter passenger train.

Longitudinal means in a direction parallel to the normal direction of travel.

Luminescent material means 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 plan and program to identify and then

eliminate the hazards of a system or reduce the associated risk to an acceptable level.

Monocoque means a type of rail vehicle construction where the shell or skin acts as a single unit with the supporting frame to resist and transmit the loads acting on the rail vehicle.

Mph means miles per hour.

95th -percentile adult male means, except as used in § 238.447(f)(2), a person weighing 215 pounds and possessing the following dimensions: erect sitting height: 38 inches; hip breadth (sitting): 16.5 inches; hip circumference (sitting): 47.2 inches; waist circumference (sitting): 42.5 inches; chest depth: 10.5 inches; and chest circumference 44.5 inches.

Occupied volume means the volume of a rail vehicle or passenger train where passengers or crewmembers are normally located during service operation, such as the operating cab and passenger seating and sleeping areas. The entire width of a vehicle's end compartment that contains a control stand is an occupied volume. A vestibule is typically not considered occupied, except when it contains a control stand for use as a control cab.

Ordered, as applied to acquisition of equipment, means that the acquiring entity has given a notice to proceed to manufacture the equipment that represents a firm financial commitment to compensate the manufacturer for the contract price of the equipment or for damages if the order is nullified. Equipment is not ordered if future exercise of a contract option is required to place the remanufacturing process in motion.

Override means to climb over the normal coupling or side buffers and linking mechanism and impact the end of the adjoining rail vehicle or unit above the underframe.

Passenger car means rail rolling equipment intended to provide transportation for members of the general public and includes a self-propelled car designed to carry passengers, baggage, mail, or express. This term includes a passenger coach, cab car, and an MU locomotive. In the context of articulated equipment, "passenger car" means that segment of the rail rolling equipment located between two trucks. This term does not include a private car.

Passenger coach means rail rolling equipment intended to provide transportation for members of the general public that is without propelling motors and without a control stand.

Passenger equipment—means

(1) All powered and unpowered passenger cars, locomotives used to haul

a passenger car, and any other rail rolling equipment used in a train with one or more passenger cars. Passenger equipment includes—

(i) A passenger coach,

(ii) A cab car,

(iii) A MU locomotive,

(iv) A locomotive not intended to provide transportation for a member of the general public that is used to power a passenger train, and

(v) Any non-self-propelled vehicle used in a passenger train, including an express car, baggage car, mail car, freight car, or a private car.

(2) In the context of articulated equipment, "passenger equipment" means a segment of rail rolling equipment located between two trucks that is used in a train with one or more passenger cars. This term does not include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

Passenger station means a location designated in a railroad's timetable where passengers are regularly scheduled to get on or off any train.

Permanent deformation means the undergoing of a permanent change in shape of a structural member of a rail vehicle.

Person means an entity of any type 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.

Piston travel means the amount of linear movement of the air brake hollow rod (or equivalent) or piston rod when forced outward by movement of the piston in the brake cylinder or actuator and limited by the brake shoes being forced against the wheel or disc.

Power car means a rail vehicle that propels a Tier II passenger train or is the lead vehicle in a Tier II passenger train, or both.

Pre-revenue service acceptance testing plan means a document, as further specified in § 238.111, prepared by a railroad that explains in detail how pre-revenue service tests of passenger equipment demonstrate that the equipment meets Federal safety standards and the railroad's own safety requirements.

Primary responsibility means the task that a person performs at least 50 percent of the time. The totality of the circumstances will be considered on a case-by-case basis in circumstances

where an individual does not spend 50 percent of his or her day engaged in any one readily identifiable type of activity.

Private car means rail rolling equipment that is used only for excursion, recreational, or private transportation purposes. A private car is not a passenger car.

Public highway-rail grade crossing means a location where a public highway, road or street, including associated sidewalks or pathways, crosses one or more active railroad tracks at grade.

Qualified maintenance person means a qualified person who has received, as a part of the training, qualification, and designation program required under § 238.109, instruction and training that includes "hands-on" experience (under appropriate supervision or apprenticeship) in one or more of the following functions: troubleshooting, inspection, testing, maintenance, or repair of the specific train brake and other components and systems for which the person is assigned responsibility. This person shall also possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which the person is assigned responsibility. Further, the qualified maintenance person shall be a person whose primary responsibility includes work generally consistent with the above-referenced functions and is designated to:

- (1) Conduct Class I brake tests under this part;
- (2) Conduct exterior calendar day mechanical inspections on MU locomotives or other passenger cars and unpowered vehicles under this part; or
- (3) Determine whether equipment not in compliance with this part may be moved as required by § 238.17.

Qualified person means a person determined by a railroad to have the knowledge and skills necessary to perform one or more functions required under this part. The railroad determines the qualifications and competencies for employees designated to perform various functions in the manner set forth in this part.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including—

- (i) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and
- (ii) High speed ground transportation systems that connect metropolitan areas,

without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Refresher training means periodic retraining required by a railroad for employees or contractors to remain qualified to perform specific equipment inspection, testing, or maintenance functions.

Repair point means a location designated by a railroad where repairs of the type necessary occur on a regular basis. A repair point has, or should have, the facilities, tools, and personnel qualified to make the necessary repairs. A repair point need not be staffed continuously.

Respond as intended means to produce the result that a device or system is designed to produce.

Rollover strength means the strength provided 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.

Running brake test means a test (as further specified in § 238.319) performed by a qualified person of a train system or component while the train is in motion to verify that the system or component functions as intended.

Running gear defect means any condition not in compliance with this part which involves a truck component, a propulsion system component, a draft system component, a wheel, or a wheel component.

Safety appliance means an appliance required under 49 U.S.C. chapter 203, excluding power brakes. The term includes automatic couplers, hand brakes, sill steps, handholds, handrails, or ladder treads made of steel or a material of equal or greater mechanical strength used by the traveling public or railroad employees that provide a means for safely coupling, uncoupling, or ascending or descending passenger equipment.

Safety-critical means a component, system, or task that, if not available, defective, not functioning, not functioning correctly, not performed, or not performed correctly, increases the risk of damage to passenger equipment or injury to a passenger, crewmember, or other person.

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 semi-permanently coupled 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.

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 sill means that portion of the underframe or side at the bottom of the rail vehicle side wall.

Single car test means a comprehensive test (as further specified in § 238.311) of the functioning of all critical brake system components installed on an individual passenger car or unpowered vehicle, other than a self-propelled passenger car, used or allowed to be used in a passenger train.

Single car test device means a device capable of controlling the application and release of the brakes on an individual passenger car or an unpowered vehicle, other than a self-propelled passenger car, through pneumatic or electrical means.

Skin means the outer covering of a fuel tank and a rail vehicle. The skin may be covered with another coating of material such as fiberglass.

Spall, glazing means small pieces of glazing that fly off the back surface of the glazing when an object strikes the front surface.

Switching service means the classification of freight cars according to commodity or destination; assembling of cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing of locomotives and cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute a train movement.

Telescope means override an adjoining rail vehicle or unit and penetrate into the interior of that adjoining vehicle or unit because of compressive forces.

Terminal means a starting point or ending point of a single scheduled trip for a train, where passengers may get on or off a train. Normally, this location is a point where the train would reverse direction or change destinations.

Tier I means operating at speeds not exceeding 125 mph.

Tier II means operating at speeds exceeding 125 mph but not exceeding 150 mph.

Tourist, scenic, historic, or excursion operations means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose.

Trailer car means a rail vehicle that neither propels a Tier II passenger train nor is the leading unit in a Tier II passenger train. A trailer car is normally without a control stand and is normally occupied by passengers.

Train means a locomotive unit or locomotive units coupled, with or without cars. For the purposes of the provisions of this part related to power brakes, the term "train" does not include such equipment when being used in switching service.

Train brake communication line means the communication link between the locomotive and passenger equipment in a train by which the brake commands are transmitted. This may be a pneumatic pipe, electrical line, or radio signal.

Train, commuter means a passenger train providing commuter service within an urban, suburban, or metropolitan area. The term includes a passenger train provided by an instrumentality of a State or a political subdivision of a State.

Train, long-distance intercity passenger means a passenger train that provides service between large cities more than 125 miles apart and is not operated exclusively in the National Railroad Passenger Corporation's Northeast Corridor.

Train, passenger means a train that transports or is available to transport members of the general public. If a train is composed of a mixture of passenger and freight equipment, that train is a passenger train for purposes of this part.

Train, short-distance intercity passenger means a passenger train that provides service exclusively on the National Railroad Passenger Corporation's Northeast Corridor or between cities that are not more than 125 miles apart.

Train, Tier II passenger means a short-distance or long-distance intercity passenger train providing service at speeds that include those exceeding 125 mph but not exceeding 150 mph.

Trainset, passenger means a passenger train.

Transverse means in a direction perpendicular to the normal direction of travel.

Ultimate strength means the load at which a structural member fractures or ceases to resist any load.

Uncoupling mechanism means the arrangement for operating the coupler by any means.

Underframe means the lower horizontal support structure of a rail vehicle.

Unit means passenger equipment of any type, except a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

Unoccupied volume means the volume of a rail vehicle or passenger train which does not contain seating and is not normally occupied by passengers or crewmembers.

Vehicle, rail means passenger equipment of any type and includes a car, trailer car, locomotive, power car, tender, or similar vehicle. This term does not include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

Vestibule means an area of a passenger car that normally does not contain seating and is used in passing from the seating area to the side exit doors.

Witness plate means a thin foil placed behind a piece of glazing undergoing an impact test. Any material spalled or broken from the back side of the glazing will dent or mark the witness plate.

Yard means a system of tracks within defined limits provided for the making up of trains, storing of cars, or other purposes.

Yard air test means a train brake system test conducted using a source of compressed air other than a locomotive.

Yield strength means the ability of a structural member to resist a change in length caused by a heavy load. Exceeding the yield strength may cause permanent deformation of the member.

§ 238.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect the person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 238.9 Responsibility for compliance.

(a) A railroad subject to this part shall not—

(1) Use, haul, permit to be used or hauled on its line, offer in interchange, or accept in interchange any train or passenger equipment, while in service,

(i) That has one or more conditions not in compliance with a safety appliance or power brake provision of this part; or

(ii) That has not been inspected and tested as required by a safety appliance or power brake provision of this part; or

(2) Use, haul, offer in interchange, or accept in interchange any train or passenger equipment, while in service,

(i) That has one or more conditions not in compliance with a provision of this part, other than the safety appliance and power brake provisions 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

(ii) That has not been inspected and tested as required by a provision of this part, other than the safety appliance and power brake provisions 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 part, passenger equipment will be considered in use prior to departure but after it has received, or should have received, the inspection required under this part for movement and is deemed ready for passenger service.

(c) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, any person as defined in § 238.5, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

§ 238.11 Penalties.

(a) Any person, as defined in § 238.5, 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 \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall

constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 238.13 Preemptive effect.

Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; that is not incompatible with a law, regulation, or order of the United States Government; and that does not unreasonably burden interstate commerce.

§ 238.15 Movement of passenger equipment with power brake defects.

Beginning July 12, 2001 the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c) of this part.

(a) *General.* This section contains the requirements for moving passenger equipment with a power brake defect without liability for a civil penalty under this part. Railroads remain liable for the movement of passenger equipment under 49 U.S.C. 20303(c). For purposes of this section, § 238.17, and § 238.503, a "power brake defect" is a condition of a power brake component, or other primary brake component, that does not conform with this part. (Passenger cars and other passenger equipment classified as locomotives under part 229 of this chapter are also covered by the movement restrictions contained in § 229.9 of this chapter for those defective conditions covered by part 229 of this chapter.)

(b) *Limitations on movement of passenger equipment containing a power brake defect found during a Class I or IA brake test.* Except as provided in paragraph (c) of this section (which addresses brakes that become defective en route after a Class I or IA brake test was performed), a commuter or passenger train that has in its consist passenger equipment containing a power brake defect found during a Class I or IA brake test (or, for Tier II trains, the equivalent) may only be moved, without civil penalty liability under this part—

(1) If all of the following conditions are met:

(i) The train is moved for purposes of repair, without passengers;

(ii) The applicable operating restrictions in paragraphs (d) and (e) of this section are observed; and

(iii) The passenger equipment is tagged, or information is recorded, as prescribed in paragraph (c)(2) of this section; or

(2) If the train is moved for purposes of scrapping or sale of the passenger equipment that has the power brake defect and all of the following conditions are met:

(i) The train is moved without passengers;

(ii) The movement is at a speed of 15 mph or less; and

(iii) The movement conforms with the railroad's air brake or power brake instructions.

(c) *Limitations on movement of passenger equipment in passenger service that becomes defective en route after a Class I or IA brake test.* Passenger equipment hauled or used in service in a commuter or passenger train that develops a power brake defect while en route to another location after receiving a Class I or IA brake test (or, for Tier II trains, the equivalent) may be hauled or used by a railroad for repair, without civil penalty liability under this part, if the applicable operating restrictions set forth in paragraphs (d) and (e) of this section are complied with and all of the following requisites are satisfied:

(1) *En route defect.* At the time of the train's Class I or IA brake test, the passenger equipment in the train was properly equipped with power brakes that comply with this part. The power brakes on the passenger equipment become defective while it is en route to another location.

(2) *Record.* At the place where the railroad first discovers the defect, a tag or card is placed on both sides of the defective passenger equipment, or an automated tracking system is provided, with the following information about the defective passenger equipment:

(i) The reporting mark and car or locomotive number;

(ii) The name of the inspecting railroad;

(iii) The name of the inspector;

(iv) The inspection location and date;

(v) The nature of each defect;

(vi) The destination of the equipment where it will be repaired; and

(vii) The signature, if possible, and job title of the person reporting the defective condition.

(3) *Automated tracking system.* Automated tracking systems used to meet the tagging requirements contained

in paragraph (c)(2) of this section may be reviewed and monitored by FRA at any time to ensure the integrity of the system. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of tagging if FRA finds that the automated tracking system is not properly secure, is inaccessible to FRA or a railroad's employees, or fails to adequately track or monitor the movement of defective equipment. Such a determination will be made in writing and will state the basis for such action.

(4) *Conditional requirement.* In addition, if an en route failure causes power brakes to be cut out or renders the brake inoperative on passenger equipment, the railroad shall:

(i) Determine the percentage of operative power brakes in the train based on the number of brakes known to be cut out or otherwise inoperative, using the formula specified in paragraph (d)(1) of this section;

(ii) Notify the person responsible for the movement of trains of the percent of operative brakes and movement restrictions on the train imposed by paragraph (d) of this section;

(iii) Notify the mechanical department of the failure; and

(iv) Confirm the percentage of operative brakes by a walking inspection at the next location where the railroad reasonably judges that it is safe to do so.

(d) *Operating restrictions based on percent operative power brakes in train.*

(1) *Computation of percent operative power brakes.*

(i) Except as specified in paragraphs (d)(1)(ii) and (iii) of this section, the percentage of operative power brakes in a train shall be determined by dividing the number of axles in the train with operative power brakes by the total number of axles in the train.

(ii) For equipment with tread brake units (TBUs), the percentage of operative power brakes shall be determined by dividing the number of operative TBUs by the total number of TBUs.

(iii) Each cut-out axle on a locomotive that weighs more than 200,000 pounds shall be counted as two cut-out axles for the purposes of calculating the percentage of operative brakes. Unless otherwise specified by the railroad, the friction braking effort over all other axles shall be considered uniform.

(iv) The following brake conditions not in compliance with this part are not considered inoperative power brakes for purposes of this section:

(A) Failure or cutting out of secondary brake systems;

(B) Inoperative or otherwise defective handbrakes or parking brakes;

(C) Excessive piston travel that does not render the power brakes ineffective; and

(D) Power brakes overdue for inspection, testing, maintenance, or stenciling under this part.

(2) *All passenger trains developing 50-74 percent operative power brakes.*

A passenger train that develops inoperative power brake equipment resulting in at least 50 percent but less than 75 percent operative power brakes may be used only as follows:

(i) The train may be moved in passenger service only to the next forward passenger station;

(ii) The speed of the train shall be restricted to 20 mph or less; and

(iii) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(3) *Commuter, short-distance intercity, and short-distance Tier II passenger trains developing 75-99 percent operative power brakes.*

(i) *75-84 percent operative brakes.* Commuter, short-distance intercity, and short-distance Tier II passenger trains which develop inoperative power brake equipment resulting in at least 75 percent but less than 85 percent operative brakes may be used only as follows:

(A) The train may be moved in passenger service only to the next forward location where the necessary repairs can be made; however, if the next forward location where the necessary repairs can be made does not have the facilities to handle the safe unloading of passengers, the train may be moved past the repair location in service only to the next forward passenger station in order to facilitate the unloading of passengers; and

(B) The speed of the train shall be restricted to 50 percent of the train's maximum allowable speed or 40 mph, whichever is less; and

(C) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(ii) *85-99 percent operative brakes.* Commuter, short-distance intercity, and short-distance Tier II passenger trains which develop inoperative power brake equipment resulting in at least 85 percent but less than 100 percent operative brakes may only be used as follows:

(A) The train may be moved in passenger service only to the next forward location where the necessary

repairs can be made; however, if the next forward location where the necessary repairs can be made does not have the facilities to handle the safe unloading of passengers, the train may be moved past the repair location in service only to the next forward passenger station in order to facilitate the unloading of passengers; and

(B) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(4) *Long-distance intercity and long-distance Tier II passenger trains developing 75-99 percent operative power brakes.*

(i) *75-84 percent operative brakes.* Long-distance intercity and long-distance Tier II passenger trains which develop inoperative power brake equipment resulting in at least 75 percent but less than 85 percent operative brakes may be used only if all of the following restrictions are observed:

(A) The train may be moved in passenger service only to the next forward repair location identified for repair of that equipment by the railroad operating the equipment in the list required by § 238.19(d); however, if the next forward repair location does not have the facilities to handle the safe unloading of passengers, the train may be moved past the designated repair location in service only to the next forward passenger station in order to facilitate the unloading of passengers; and

(B) The speed of the train shall be restricted to 50 percent of the train's maximum allowable speed or 40 mph, whichever is less; and

(C) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(ii) *85-99 percent operative brakes.* Long-distance intercity and long-distance Tier II passenger trains which develop inoperative power brake equipment resulting in at least 85 percent but less than 100 percent operative brakes may be used only if all of the following restrictions are observed:

(A) The train may be moved in passenger service only to the next forward repair location identified for repair of that equipment by the railroad operating the equipment in the list required by § 238.19(d); however, if the next forward repair location does not have the facilities to handle the safe unloading of passengers, the train may be moved past the designated repair

location in service only to the next forward passenger station in order to facilitate the unloading of passengers; and

(B) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(e) *Operating restrictions on passenger trains with inoperative power brakes on the front or rear unit.* If the power brakes on the front or rear unit in any passenger train are completely inoperative the following shall apply:

(1) If the handbrake is located inside the interior of the car:

(i) A qualified person shall be stationed at the handbrake on the unit;

(ii) The car shall be locked-out and empty except for the railroad employee manning the handbrake; and

(iii) Appropriate speed restrictions shall be placed on the train by a qualified person;

(2) If the handbrake is located outside the interior of the car or is inaccessible to a qualified person:

(i) The car shall be locked-out and empty;

(ii) The train shall be operated at restricted speed not to exceed 20 mph; and

(iii) The car shall be removed from the train or repositioned in the train at the first location where it is possible to do so.

(f) *Special Notice for Repair.* Nothing in this section authorizes the movement of passenger equipment subject to a Special Notice for Repair under part 216 of this chapter unless the movement is made in accordance with the restrictions contained in the Special Notice.

§ 238.17 Movement of passenger equipment with other than power brake defects.

Beginning July 12, 2001 the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c) of this part.

(a) *General.* This section contains the requirements for moving passenger equipment with other than a power brake defect. (Passenger cars and other passenger equipment classified as locomotives under part 229 of this chapter are also covered by the movement restrictions contained in § 229.9 of this chapter for those defective conditions covered by part 229 of this chapter.)

(b) *Limitations on movement of passenger equipment containing defects found at time of calendar day inspection.* Except as provided in §§ 238.303(e)(15) and 238.305(c)(5), passenger equipment containing a condition not in conformity with this part at the time of its calendar day mechanical inspection may be moved from that location for repair if all of the following conditions are satisfied:

(1) If the condition involves a running gear defect, the defective equipment is not used in passenger service and is moved in a non-revenue train;

(2) If the condition involves a non-running gear defect, the defective equipment may be used in passenger service in a revenue train provided that a qualified maintenance person determines that it is safe to do so, and if so, the car is locked out and empty, and all movement restrictions are observed except that the car may be occupied by a member of the train crew or a railroad employee to the extent necessary to safely operate the train;

(3) The requirements of paragraphs (c)(3) and (c)(4) of this section are met; and

(4) The special requirements of paragraph (e) of this section, if applicable, are met.

(c) *Usual limitations on movement of passenger equipment that develops defects en route.* Except as provided in §§ 238.303(e)(15) and 238.503(f), passenger equipment that develops en route to its destination, after its calendar day inspection was performed and before its next calendar day mechanical inspection is performed, any defect not in compliance with this part, other than a power brake defect, may be moved only if the railroad complies with all of the following requirements and, if applicable, the special requirements in paragraph (e) of this section:

(1) Prior to movement of equipment with a potential running gear defect, a qualified maintenance person shall determine if it is safe to move the equipment in passenger service and, if so, the maximum speed and other restrictions necessary for safely conducting the movement. If appropriate, these determinations may be made based upon a description of the defective condition provided by a crewmember. If the determinations required by this paragraph are made by an off-site qualified maintenance person based on a description of the defective condition by on-site personnel, then a qualified maintenance person shall perform a physical inspection of the defective equipment, at the first location possible, to verify the description of the

defect provided by the on-site personnel.

(2) Prior to movement of equipment with a non-running gear defect, a qualified person or a qualified maintenance person shall determine if it is safe to move the equipment in passenger service and, if so, the maximum speed and other restrictions necessary for safely conducting the movement. If appropriate, these determinations may be made based upon a description of the defective condition provided by the on-site personnel.

(3) Prior to movement of any defective equipment, the qualified person or qualified maintenance person shall notify the crewmember in charge of the movement of the defective equipment, who in turn shall inform all other crewmembers of the presence of the defective condition(s) and the maximum speed and other restrictions determined under paragraph (c)(1) or (c)(2) of this section. The movement shall be made in conformance with such restrictions.

(4) The railroad shall maintain a record of all defects reported and their subsequent repair in the defect tracking system required in § 238.19. In addition, prior to movement of the defective equipment, a tag or card placed on both sides of the defective equipment, or an automated tracking system, shall record the following information about the defective equipment:

(i) The reporting mark and car or locomotive number;

(ii) The name of the inspecting railroad;

(iii) The name of the inspector, inspection location, and date;

(iv) The nature of each defect;

(v) Movement restrictions and safety restrictions, if any;

(vi) The destination of the equipment where it will be repaired; and

(vii) The signature, if possible, as well as the job title and location of the person making the determinations required by this section.

(5) *Automated tracking system.* Automated tracking systems used to meet the tagging requirements contained in paragraph (c)(4) of this section may be reviewed and monitored by FRA at any time to ensure the integrity of the system. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of tagging if FRA finds that the automated tracking system is not properly secure, is inaccessible to FRA or a railroad's employees, or fails to adequately track or monitor the movement of defective equipment. Such a determination will be made in writing and will state the basis for such action.

(6) After a qualified maintenance person or a qualified person verifies that the defective equipment is safe to remain in service as required in paragraphs (c)(1) and (c)(2) of this section, the defective equipment that develops a condition not in compliance with this part while en route may continue in passenger service not later than the next calendar day mechanical inspection, if the requirements of this paragraph are otherwise fully met.

(d) *Inspection of roller bearings on equipment involved in a derailment.*

(1) A railroad shall not continue passenger equipment in service that has a roller bearing whose truck was involved in a derailment unless the bearing has been inspected and tested by:

(i) Visual examination to determine whether it shows any sign of damage; and

(ii) Spinning freely its wheel set or manually rotating the bearing to determine whether the bearing makes any unusual noise.

(2) The roller bearing shall be disassembled from the axle and inspected internally if:

(i) It shows any external sign of damage;

(ii) It makes any unusual noise when its wheel set is spun freely or the bearing is manually rotated;

(iii) Its truck was involved in a derailment at a speed of more than 10 miles per hour; or

(iv) Its truck was dragged on the ground for more than 200 feet.

(e) *Special requisites for movement of passenger equipment with safety appliance defects.* Consistent with 49 U.S.C. 20303, passenger equipment with a safety appliance not in compliance with this part or with part 231 of this chapter, if applicable, may be moved—

(1) If necessary to effect repair of the safety appliance;

(2) From the point where the safety appliance defect was first discovered by the railroad to the nearest available location on the railroad where the necessary repairs required to bring the passenger equipment into compliance can be made or, at the option of the receiving railroad, the equipment may be received and hauled for repair to a point on the receiving railroad's line that is no farther than the point on the delivering railroad's line where the repair of the defect could have been made;

(3) If a tag placed on both sides of the passenger equipment or an automated tracking system contains the information required under paragraph (c)(4) of this section; and

(4) After notification of the crewmember in charge of the movement of the defective equipment, who in turn shall inform all other crewmembers of the presence of the defective condition(s).

(f) *Special Notice for Repair.* Nothing in this section authorizes the movement of equipment subject to a Special Notice for Repair under part 216 of this chapter unless the movement is made in accordance with the restrictions contained in the Special Notice.

§ 238.19 Reporting and tracking defective passenger equipment.

(a) *General.* Beginning July 12, 2001 each railroad shall have in place a reporting and tracking system for passenger equipment with a defect not in conformance with this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c) of this part. The reporting and tracking system shall record the following information:

- (1) The identification number of the defective equipment;
- (2) The date the defect occurred;
- (3) The nature of the defect;
- (4) The determination made by a qualified person or qualified maintenance person on whether the equipment is safe to run;
- (5) The name of the qualified person or qualified maintenance person making such a determination;
- (6) Any operating restrictions placed on the equipment; and
- (7) Repairs made and the date that they were made.

(b) *Retention of records.* At a minimum, each railroad shall keep the records described in paragraph (a) of this section for one periodic maintenance interval for each specific type of equipment as described in the railroad's inspection, testing, and maintenance plan required by § 238.107. FRA strongly encourages railroads to keep these records for longer periods of time because they form the basis for future reliability-based decisions concerning test and maintenance intervals that may be developed pursuant to § 238.307(b).

(c) *Availability of records.* Railroads shall make defect reporting and tracking records available to FRA upon request.

(d) *List of power brake repair points.* Railroads operating long-distance intercity and long-distance Tier II passenger equipment shall designate locations, in writing, where repairs to passenger equipment with a power brake defect will be made and shall provide the list to FRA's Associate

Administrator for Safety and make it available to FRA for inspection and copying upon request. Railroads operating these trains shall designate a sufficient number of repair locations to ensure the safe and timely repair of passenger equipment. These designations shall not be changed without at least 30 days' advance written notice to FRA's Associate Administrator for Safety.

§ 238.21 Special approval procedure.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of alternative standards under §§ 238.103, 238.223, 238.309, 238.311, 238.405, or 238.427; for approval of alternative compliance under § 238.201; and for special approval of pre-revenue service acceptance testing plans as required by § 238.111. (Requests for approval of programs for the inspection, testing, and maintenance of Tier II passenger equipment are governed by § 238.505.)

(b) *Petitions for special approval of alternative standard.* Each petition for special approval of an alternative standard shall contain—

- (1) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition;
- (2) The alternative proposed, in detail, to be substituted for the particular requirements of this part;
- (3) Appropriate data or analysis, or both, establishing that the alternative will provide at least an equivalent level of safety; and

(4) A statement affirming that the railroad has served a copy of the petition on designated representatives of its employees, together with a list of the names and addresses of the persons served.

(c) *Petitions for special approval of alternative compliance.* Each petition for special approval of alternative compliance shall contain—

(1) The name, title, address, and telephone number of the primary person to be contacted with regard to the petition;

(2) The elements prescribed in § 238.201(b); and

(3) A statement affirming that the railroad has served a copy of the petition on designated representatives of its employees, together with a list of the names and addresses of the persons served.

(d) *Petitions for special approval of pre-revenue service acceptance testing plan.*

(1) Each petition for special approval of a pre-revenue service acceptance testing plan shall contain—

(i) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition; and

(ii) The elements prescribed in § 238.111.

(2) Three copies of each petition for special approval of the pre-revenue service acceptance testing plan shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 25, Washington, D.C. 20590.

(e) *Federal Register notice.* FRA will publish a notice in the **Federal Register** concerning each petition under paragraphs (b) and (c) of this section.

(f) *Comment.* Not later than 30 days from the date of publication of the notice in the **Federal Register** concerning a petition under paragraphs (b) or (c) of this section, any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Three copies of each comment shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., Mail Stop 25, Washington, D. C. 20590.

(3) The commenter shall certify that a copy of the comment was served on each petitioner.

(g) *Disposition of petitions.*

(1) FRA will conduct a hearing on a petition in accordance with the procedures provided in § 211.25 of this chapter.

(2) If FRA finds that the petition complies with the requirements of this section or that the proposed plan is acceptable or changes are justified, or both, the petition will 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.

(3) If FRA finds that the petition does not comply with the requirements of this section, or that the proposed plan is not acceptable or that the proposed changes are not justified, or both, the petition will be denied, normally within 90 days of its receipt.

(4) When FRA grants or denies a petition, or reopens consideration of the petition, written notice is sent to the petitioner and other interested parties.

§ 238.23 Information collection.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*) and are assigned OMB control number 2130-0544.

(b) The information collection requirements are found in the following sections: §§ 238.1, 238.7, 238.11, 238.15, 238.17, 238.19, 238.21, 238.103, 238.105, 238.107, 238.109, 238.111, 238.201, 238.203, 238.211, 238.223, 238.231, 238.237, 238.301, 238.303, 238.305, 238.307, 238.309, 238.311, 238.313, 238.315, 238.317, 238.403, 238.405, 238.421, 238.423, 238.427, 238.431, 238.437, 238.441, 238.445, 238.447, 238.503, 238.505, and 238.603.

Subpart B—Safety Planning and General Requirements**§ 238.101 Scope.**

This subpart contains safety planning and general safety requirements for all railroad passenger equipment subject to this part.

§ 238.103 Fire safety.

(a) *Materials.* (1) Materials used in constructing a passenger car or a cab of a locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part, or alternative standards issued or recognized by an expert consensus organization after special approval of FRA under § 238.21.

(2) On or after November 8, 1999, materials introduced in a passenger car or a locomotive cab, as part of any kind of rebuild, refurbishment, or overhaul of the car or cab, shall meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part, or alternative standards issued or recognized by an expert consensus organization after special approval of FRA under § 238.21.

(b) *Certification.* A railroad shall require certification that a representative sample of combustible materials to be—

(1) Used in constructing a passenger car or a locomotive cab, or

(2) Introduced in a passenger car or a locomotive cab, as part of any kind of rebuild, refurbishment, or overhaul of the car or cab, has been tested by a recognized independent testing laboratory and that the results show the representative sample complies with the

requirements of paragraph (a) of this section at the time it was tested.

(c) *Fire safety analysis for procuring new passenger equipment.* In procuring new passenger equipment, each railroad shall ensure that fire safety considerations and features in the design of the equipment reduce the risk of personal injury and equipment damage caused by fire to an acceptable level using MIL-STD-882C as a guide or an alternative, formal safety methodology. To this end, each railroad shall complete a written fire safety analysis for the passenger equipment being procured. In conducting the analysis, the railroad shall—

(1) Take effective steps to design the equipment to be sufficiently fire resistant so that fire detection devices permit evacuation of all passengers and crewmembers before fire, smoke, or toxic fumes cause injury to any passenger or crewmember.

(2) Identify, analyze, and prioritize the fire hazards inherent in the design of the equipment.

(3) Reasonably ensure that a ventilation system in the equipment does not contribute to the lethality of a fire.

(4) Identify in writing any train component that is a risk of initiating fire and which requires overheat protection. An overheat detector shall be installed in any component when the analysis determines that an overheat detector is necessary.

(5) Identify in writing any unoccupied train compartment that contains equipment or material that poses a fire hazard, and analyze the benefit provided by including a fire or smoke detection system in each compartment so identified. A fire or smoke detector shall be installed in any unoccupied compartment when the analysis determines that such equipment is necessary to ensure sufficient time for the safe evacuation of passengers and crewmembers from the train. For purposes of this section, an unoccupied train compartment means any part of the equipment structure that is not normally occupied during operation of the train, including a closet, baggage compartment, food pantry, etc.

(6) Determine whether any occupied or unoccupied space requires a portable fire extinguisher and, if so, the proper type and size of the fire extinguisher for each location. As required by § 239.101 of this chapter, each passenger car is required to have a minimum of one portable fire extinguisher. If the analysis performed indicates that one or more additional portable fire extinguishers are needed, such shall be installed.

(7) On a case-by-case basis, the railroad shall analyze the benefit provided by including a fixed, automatic fire-suppression system in any unoccupied train compartment that contains equipment or material that poses a fire hazard, and determine the proper type and size of the automatic fire-suppression system for each location. A fixed, automatic fire suppression system shall be installed in any unoccupied compartment when the analysis determines that such equipment is practical and necessary to ensure sufficient time for the safe evacuation of passengers and crewmembers from the train.

(8) Describe the analysis and testing necessary to—

(i) Demonstrate that the fire protection approach taken in the design of the equipment will meet the fire protection requirements of this part, and

(ii) Select materials which help provide sufficient fire resistance to reasonably ensure adequate time to detect a fire and safely evacuate the passengers and crewmembers.

(9) Explain how safety issues are resolved in relation to cost and performance issues in the design of the equipment to reduce the risk of each fire hazard.

(d) *Fire safety analysis for existing passenger equipment.* (1) Not later than July 10, 2000, each passenger railroad shall complete a preliminary fire safety analysis for each category of existing rail equipment and current rail service.

(2) Not later than July 10, 2001, each such railroad shall—

(i) Complete a final fire safety analysis for any category of existing passenger equipment and service evaluated during the preliminary fire safety analysis as likely presenting an unacceptable risk of personal injury. In conducting the analysis, the railroad shall consider the extent to which materials comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part or alternative standards approved by FRA under this part.

(ii) Take remedial action to reduce the risk of personal injuries to an acceptable level in any such category, if the railroad finds the risk to be unacceptable. In considering remedial action, a railroad is not required to replace material found not to comply with the test performance criteria for flammability and smoke emission characteristics required by this part, if:

(A) The risk of personal injuries from the material is negligible based on the railroad's operating environment and the material's size, or location, or both; or

(B) The railroad takes alternative action which reduces the risk of personal injuries to an acceptable level.

(3) Not later than July 10, 2003, each such railroad shall—

(i) Complete a fire safety analysis for all categories of equipment and service. In completing this analysis, the railroad shall, as far as practicable, determine the extent to which remaining materials comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part or alternative standards approved by FRA under this part.

(ii) Take remedial action to reduce the risk of personal injuries to an acceptable level in any such category, if the railroad finds the risk to be unacceptable. In considering remedial action, a railroad is not required to replace material found not to comply with the test performance criteria for flammability and smoke emission characteristics required by this part, if:

(A) The risk of personal injuries from the material is negligible based on the railroad's operating environment and the material's size, or location, or both; or

(B) The railroad takes alternative action which reduces the risk of personal injuries to an acceptable level.

(4) Where possible prior to transferring existing equipment to a new category of service, but in no case more than 90 days following such a transfer, the passenger railroad shall complete a new fire safety analysis taking into consideration the change in railroad operations and shall effect prompt action to reduce any identified risk to an acceptable level.

(5) As used in this paragraph, "category of rail equipment and current rail service" shall be determined by the railroad based on relevant fire safety risks, including available ignition sources, presence or absence of heat/smoke detection systems, known variations from the required material test performance criteria or alternative standards approved by FRA, and availability of rapid and safe egress to the exterior of the vehicle under conditions secure from fire, smoke, and other hazards.

(e) *Inspection, testing, and maintenance.* Each railroad shall develop and adopt written procedures for the inspection, testing, and maintenance of all fire safety systems and fire safety equipment on the passenger equipment it operates. The railroad shall comply with those procedures that it designates as mandatory for the safety of the equipment and its occupants.

§ 238.105 Train hardware and software safety.

These requirements of this section apply to hardware and software used to control or monitor safety functions in passenger equipment ordered on or after September 8, 2000, and such components implemented or materially modified in new or existing passenger equipment on or after September 9, 2002.

(a) The railroad shall develop and maintain a written hardware and software safety program to guide the design, development, testing, integration, and verification of computer software and hardware that controls or monitors equipment safety functions.

(b) The hardware and software safety program shall be based on a formal safety methodology that includes a Failure Modes, Effects, Criticality Analysis (FMECA); verification and validation testing for all hardware and software components and their interfaces; and comprehensive hardware and software integration testing to ensure that the software functions as intended.

(c) Under the hardware and software safety program, software that controls or monitors safety functions shall be considered safety-critical unless a completely redundant, failsafe, non-software means ensuring the same function is provided. The hardware and software safety program shall include a description of how the following will be accomplished, achieved, carried out, or implemented to ensure software safety and reliability:

- (1) The software design process;
- (2) The software design documentation;
- (3) The software hazard analysis;
- (4) Software safety reviews;
- (5) Software hazard monitoring and tracking;
- (6) Hardware and software integration safety tests; and
- (7) Demonstration of overall software safety as part of the pre-revenue service tests of equipment.

(d) Hardware and software that controls or monitors passenger equipment safety functions shall include design feature(s) that result in a safe condition in the event of a computer hardware or software failure.

(e) The railroad shall comply with the elements of its hardware and software safety program that affect the safety of the passenger equipment.

§ 238.107 Inspection, testing, and maintenance plan.

(a) *General.* Beginning July 12, 2001 the following provisions of this section apply to railroads operating Tier I

passenger equipment covered by this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c).

(b) Each railroad shall develop, and provide to FRA upon request, a detailed inspection, testing, and maintenance plan consistent with the requirements of this part. This plan shall include a detailed description of the following:

- (1) 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 inspections and tests.

(c) The inspection, testing, and maintenance plan required by this section is not intended to address and should not include procedures to address employee working conditions that arise in the course of conducting the inspections, tests, and maintenance set forth in the plan. When requesting a copy of the railroad's plan, FRA does not intend to review any portion of the plan that relates to employee working conditions.

(d) The inspection, testing, and maintenance plan required by this section shall be reviewed by the railroad annually.

§ 238.109 Training, qualification, and designation program.

(a) Beginning July 12, 2001 each railroad shall have adopted a training, qualification, and designation program for employees and contractors that perform safety-related inspections, tests, or maintenance of passenger equipment, and trained such employees and contractors in accordance with the program. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c). For purposes of this section, a "contractor" is defined as a person under contract with the railroad or an employee of a person under contract with the railroad to perform any of the tasks required by this part.

(b) As part of this program, the railroad shall, at a minimum:

- (1) Identify the tasks related to the inspection, testing, and maintenance that must be performed on each type of equipment that the railroad operates;
- (2) Develop written procedures for the performance of the tasks identified;
- (3) Identify the skills and knowledge necessary to perform each task;
- (4) Develop or incorporate a training curriculum that includes classroom and

“hands-on” lessons designed to impart the skills and knowledge identified as necessary to perform each task. The developed or incorporated training curriculum shall specifically address the Federal regulatory requirements contained in this part that are related to the performance of the tasks identified;

(5) Require all employees and contractors to successfully complete the training course that covers the equipment and tasks for which they are responsible as well as the specific Federal regulatory requirements contained in this part related to equipment and tasks for which they are responsible;

(6) Require all employees and contractors to pass a written examination covering the equipment and tasks for which they are responsible as well as the specific Federal regulatory requirements contained in this part related to equipment and tasks for which they are responsible;

(7) Require all employees and contractors to individually demonstrate “hands-on” capability to successfully perform the tasks required to be performed as part of their duties on the type equipment to which they are assigned;

(8) Require supervisors to complete the program that covers the employees whom they supervise, including refresher training;

(9) Require supervisors to exercise oversight to ensure that all the identified tasks are performed in accordance with the railroad’s written procedures;

(10) Designate in writing that each employee and contractor has the knowledge and skills necessary to perform the safety-related tasks that are part of his or her job;

(11) Require periodic refresher training at an interval not to exceed three years that includes classroom and “hands-on” training, as well as testing;

(12) Add new equipment to the qualification and designation program prior to its introduction to revenue service; and

(13) Maintain records adequate to demonstrate that each employee and contractor performing safety-related tasks on passenger equipment is currently qualified to do so. These records shall be adequate to distinguish the qualifications of the employee or contractor as a qualified person or as a qualified maintenance person.

§ 238.111 Pre-revenue service acceptance testing plan.

(a) *Passenger equipment that has previously been used in revenue service in the United States.* For passenger

equipment that has previously been used in revenue service in the United States, each railroad shall test the equipment on its system prior to placing such equipment in revenue service for the first time on its railroad to ensure the compatibility of the equipment with the railroad’s operating system (including the track, and signal system). A description of such testing shall be retained by the railroad and made available to FRA for inspection and copying upon request. For purposes of this paragraph, passenger equipment that has previously been used in revenue service in the United States means:

(1) The actual equipment used in such service;

(2) Equipment manufactured identically to that actual equipment; and

(3) Equipment manufactured similarly to that actual equipment with no material differences in safety-critical components or systems.

(b) *Passenger equipment that has not been used in revenue service in the United States.* Before using passenger equipment for the first time on its system that has not been used in revenue service in the United States, each railroad shall:

(1) Prepare a pre-revenue service acceptance testing plan for the equipment which contains the following elements:

(i) An identification of any waivers of FRA or other Federal safety regulations required for the testing or for revenue service operation of the equipment;

(ii) A clear statement of the test objectives. One of the principal test objectives shall be to demonstrate that the equipment meets the safety requirements specified in this part when operated in the environment in which it is to be used;

(iii) A planned schedule for conducting the testing;

(iv) A description of the railroad property or facilities to be used to conduct the testing;

(v) A detailed description of how the testing is to be conducted, including a description of the criteria to be used to evaluate the equipment’s performance;

(vi) A description of how the test results are to be recorded;

(vii) A description of any special instrumentation to be used during the tests;

(viii) A description of the information or data to be obtained;

(ix) A description of how the information or data obtained is to be analyzed or used;

(x) A description of any criteria to be used as safety limits during the testing;

(xi) A description of the criteria to be used to measure or determine the success or failure of the tests. If acceptance is to be based on extrapolation of less than full-level testing results, the analysis to be done to justify the validity of the extrapolation shall be described;

(xii) Quality control procedures to ensure that the inspection, testing, and maintenance procedures are followed;

(xiii) Criteria to be used for the revenue service operation of the equipment; and

(xiv) A description of any testing of the equipment that has previously been performed.

(2) Submit a copy of the plan to FRA at least 30 days prior to testing the equipment and include with that submission notification of the times and places of the pre-revenue service tests to permit FRA observation of such tests. For Tier II passenger equipment, the railroad shall obtain FRA approval of the plan under the procedures specified in § 238.21.

(3) Comply with the plan, including fully executing the tests required by the plan.

(4) Document in writing the results of the tests. For Tier II passenger equipment, the railroad shall report the results of the tests to the FRA Associate Administrator for Safety at least 90 days prior to its intended operation of the equipment in revenue service.

(5) Correct any safety deficiencies identified in the design of the equipment or in the inspection, testing, and maintenance procedures, uncovered during the testing. If safety deficiencies cannot be corrected by design changes, the railroad shall impose operational limitations on the revenue service operation of the equipment that are designed to ensure that the equipment can operate safely. For Tier II passenger equipment, the railroad shall comply with any operational limitations imposed by the FRA Associate Administrator for Safety on the revenue service operation of the equipment for cause stated following FRA review of the results of the test program. This section does not restrict a railroad from petitioning FRA for a waiver of a safety regulation under the procedures specified in part 211 of this chapter.

(6) Make the plan and documentation kept pursuant to that plan available for inspection and copying by FRA upon request.

(7) For Tier II passenger equipment, obtain approval from the FRA Associate Administrator for Safety prior to placing the equipment in revenue service. The Associate Administrator grants such approval upon a showing of the

railroad's compliance with the applicable requirements of this part.

(c) If a railroad plans a major upgrade or introduction of new technology on Tier II passenger equipment that has been used in revenue service in the United States and that affects a safety system on such equipment, the railroad shall follow the procedures specified in paragraph (b) of this section prior to placing the equipment in revenue service with such a major upgrade or introduction of new technology.

§ 238.113 Emergency window exits.

(a) The following requirements apply on or after November 8, 1999—

(1) Each passenger car shall have a minimum of four emergency window exits, either in a staggered configuration where practical or with one exit located in each end of each side of the passenger car. If the passenger car has multiple levels, each main level shall have a minimum of four emergency window exits, either in a staggered configuration where practical or with one exit located in each end of each side on each level.

(2) Each sleeping car, and any similarly designed car having a number of separate compartments intended to be occupied by passengers or train crewmembers, shall have at least one emergency window exit in each compartment.

(3) Each emergency window exit shall be designed to permit rapid and easy removal during an emergency situation without requiring the use of a tool or other implement.

(b) Each emergency window exit in a passenger car, including a sleeper car, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have a minimum unobstructed opening with dimensions of 26 inches horizontally by 24 inches vertically.

(c) *Marking and instructions.*
[Reserved]

§ 238.115 Emergency lighting.

(a) This section applies to each passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. This section applies to each level of a multi-level passenger car.

(b) Emergency lighting shall be provided in each passenger car and shall include the following:

(1) A minimum, average illumination level of 1 foot-candle measured at floor level adjacent to each exterior door and each interior door providing access to an exterior door (such as a door opening into a vestibule);

(2) A minimum, average illumination level of 1 foot-candle measured 25

inches above floor level along the center of each aisle and passageway;

(3) A minimum illumination level of 0.1 foot-candle measured 25 inches above floor level at any point along the center of each aisle and passageway; and

(4) A back-up power system capable of:

(i) Operating in all equipment orientations within 45 degrees of vertical;

(ii) Operating after the initial shock of a collision or derailment resulting in the following individually applied accelerations:

(A) Longitudinal: 8g;

(B) Lateral: 4g; and

(C) Vertical: 4g; and

(iii) Operating all emergency lighting for a period of at least 90 minutes without a loss of more than 40% of the minimum illumination levels specified in this paragraph (b).

§ 238.117 Protection against personal injury.

On or after November 8, 1999, all moving parts, high voltage equipment, electrical conductors and switches, and pipes carrying hot fluids or gases on all passenger equipment shall be appropriately equipped with interlocks or guards to minimize the risk of personal injury. This section does not apply to the interior of a private car.

§ 238.119 Rim-stamped straight-plate wheels.

(a)(1) Except as provided in paragraph (a)(2) of this section, on or after November 8, 1999, no railroad shall place or continue in service any vehicle, other than a private car, that is equipped with a rim-stamped straight-plate wheel if a brake shoe acts on the tread of the wheel for the purpose of slowing the vehicle.

(2) A commuter railroad may continue in service a vehicle equipped with a Class A, rim-stamped straight-plate wheel mounted on an inboard-bearing axle until the railroad exhausts its replacement stock of wheels held as of May 12, 1999, provided the railroad does not modify the operation of the vehicle in any way that would result in increased thermal input to the wheel during braking.

(b) A rim-stamped straight-plate wheel shall not be used as a replacement wheel on a private car that operates in a passenger train if a brake shoe acts on the tread of the wheel for the purpose of slowing the car.

(c) The requirements of this section do not apply to a wheel that is periodically tread-braked for a short duration by automatic circuitry for the

sole purpose of cleaning the wheel tread surface.

Subpart C—Specific Requirements for Tier I Passenger Equipment

§ 238.201 Scope/alternative compliance.

(a) *Scope.* (1) This subpart contains requirements for railroad passenger equipment operating at speeds not exceeding 125 miles per hour. As stated in § 238.229, all such passenger equipment remains subject to the safety appliance requirements contained in Federal statute at 49 U.S.C. chapter 203 and in FRA regulations at part 231 and § 232.2 of this chapter. Unless otherwise specified, these requirements only apply to passenger equipment ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002.

(2) The structural standards of this subpart (§ 238.203B-static end strength; § 238.205—anti-climbing mechanism; § 238.207—link between coupling mechanism and car body; § 238.209—forward-facing end structure of locomotives; § 238.211—collision posts; § 238.213—corner posts; § 238.215—rollover strength; § 238.217—side structure; § 238.219—truck-to-car-body attachment; and § 238.223—locomotive fuel tanks) do not apply to passenger equipment if used exclusively on a rail line:

(i) With no public highway-rail grade crossings;

(ii) On which no freight operations occur at any time;

(iii) On which only passenger equipment of compatible design is utilized; and

(iv) On which trains operate at speeds not exceeding 79 mph.

(b) *Alternative compliance.* Passenger equipment of special design shall be deemed to comply with this subpart, other than § 238.203, for the service environment in which the petitioner proposes to operate the equipment if the FRA Associate Administrator for Safety determines under paragraph (c) of this section that the equipment provides at least an equivalent level of safety in such environment with respect to the protection of its occupants from serious injury in the case of a derailment or collision. In making a determination under paragraph (c) the Associate Administrator shall consider, as a whole, all of those elements of casualty prevention or mitigation relevant to the integrity of the equipment that are addressed by the requirements of this subpart.

(c)(1) The Associate Administrator may only make a finding of equivalent safety and compliance with this subpart,

other than § 238.203, based upon a submission of data and analysis sufficient to support that determination. The petition shall include:

(i) The information required by § 238.21(c);

(ii) Information, including detailed drawings and materials specifications, sufficient to describe the actual construction of the equipment of special design;

(iii) Engineering analysis sufficient to describe the likely performance of the equipment in derailment and collision scenarios pertinent to the safety requirements for which compliance is required and for which the equipment does not conform to the specific requirements of this subpart; and

(iv) A quantitative risk assessment, incorporating the design information and engineering analysis described in this paragraph, demonstrating that the equipment, as utilized in the service environment for which recognition is sought, presents no greater hazard of serious personal injury than equipment that conforms to the specific requirements of this subpart.

(2) Any petition made under this paragraph is subject to the procedures set forth in § 238.21, and will be disposed of in accordance with § 238.21(g).

§ 238.203 Static end strength.

(a)(1) Except as further specified in this paragraph or in paragraph (d), on or after November 8, 1999 all passenger equipment shall resist a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure.

(2) For a passenger car or a locomotive, the static end strength of unoccupied volumes may be less than 800,000 pounds if:

(i) Energy absorbing structures are used as part of a crash energy management design of the passenger car or locomotive, and

(ii) The passenger car or locomotive resists a minimum static end load of 800,000 pounds applied on the line of draft at the ends of its occupied volume without permanent deformation of the body structure.

(3) For a locomotive placed in service prior to November 8, 1999, as an alternative to resisting a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure, the locomotive shall resist a horizontal load of 1,000,000 pounds applied along the longitudinal center line of the locomotive at a point on the buffer beam construction 12 inches above the center line of draft without permanent

deformation of the body structure. The application of this load shall not be distributed over an area greater than 6 inches by 24 inches. The alternative specified in this paragraph is not applicable to a cab car or an MU locomotive.

(4) The requirements of this paragraph do not apply to:

(i) A private car; or

(ii) Unoccupied passenger equipment operating at the rear of a passenger train.

(b) Passenger equipment placed in service before November 8, 1999 is presumed to comply with the requirements of paragraph (a)(1) of this section, unless the railroad operating the equipment has knowledge, or FRA makes a showing, that such passenger equipment was not built to the requirements specified in paragraph (a)(1).

(c) When overloaded in compression, the body structure of passenger equipment shall be designed, to the maximum extent possible, to fail by buckling or crushing, or both, of structural members rather than by fracture of structural members or failure of structural connections.

(d) *Grandfathering of non-compliant equipment for use on a specified rail line or lines.*

(1) *Grandfathering approval is equipment and line specific.*

Grandfathering approval of non-compliant equipment under this paragraph is limited to usage of the equipment on a particular rail line or lines. Before grandfathered equipment can be used on another rail line, a railroad must file and secure approval of a grandfathering petition under paragraph (d)(3) of this section.

(2) *Temporary usage of non-compliant equipment.* Any passenger equipment placed in service on a rail line or lines before November 8, 1999 that does not comply with the requirements of paragraph (a)(1) may continue to be operated on that particular line or (those particular lines) if the operator of the equipment files a petition seeking grandfathering approval under paragraph (d)(3) before November 8, 1999. Such usage may continue while the petition is being processed, but in no event later than May 8, 2000, unless the petition is approved.

(3) *Petitions for grandfathering.* Petitions for grandfathering shall include:

(i) The name, title, address, and telephone number of the primary person to be contacted with respect to the petition;

(ii) Information, including detailed drawings and material specifications,

sufficient to describe the actual construction of the equipment;

(iii) Engineering analysis sufficient to describe the likely performance of the static end strength of the equipment and the likely performance of the equipment in derailment and collision scenarios pertinent to the equipment's static end strength;

(iv) A description of risk mitigation measures that will be employed in connection with the usage of the equipment on a specified rail line or lines to decrease the likelihood of accidents involving the use of the equipment; and

(v) A quantitative risk assessment, incorporating the design information, engineering analysis, and risk mitigation measures described in this paragraph, demonstrating that the use of the equipment, as utilized in the service environment for which recognition is sought, is in the public interest and is consistent with railroad safety.

(e) *Service.* Three copies of each petition shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., Mail Stop 25, Washington, D.C. 20590.

(f) **Federal Register notice.** FRA will publish a notice in the **Federal Register** concerning each petition under paragraph (d) of this section.

(g) *Comment.* Not later than 30 days from the date of publication of the notice in the **Federal Register** concerning a petition under paragraph (d) of this section, any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Three copies of each comment shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., Mail Stop 25, Washington, D. C. 20590.

(3) The commenter shall certify that a copy of the comment was served on each petitioner.

(h) *Disposition of petitions.*

(1) FRA will conduct a hearing on a petition in accordance with the procedures provided in § 211.25 of this chapter.

(2) If FRA finds that the petition complies with the requirements of this section and that the proposed usage is in the public interest and consistent with railroad safety, the petition will 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.

(3) If FRA finds that the petition does not comply with the requirements of this section or that the proposed usage is not in the public interest and consistent with railroad safety, the petition will be denied, normally within 90 days of its receipt.

(4) When FRA grants or denies a petition, or reopens consideration of the petition, written notice is sent to the petitioner and other interested parties.

§ 238.205 Anti-climbing mechanism.

(a) Except as provided in paragraph (b) of this section, all passenger equipment placed in service for the first time on or after September 8, 2000 shall have at both the forward and rear ends an anti-climbing mechanism capable of resisting an upward or downward vertical force of 100,000 pounds without failure. When coupled together in any combination to join two vehicles, AAR Type H and Type F tight-lock couplers satisfy this requirement.

(b) Each locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have an anti-climbing mechanism at its forward end capable of resisting an upward or downward vertical force of 200,000 pounds without failure, in lieu of the forward end anti-climbing mechanism requirements described in paragraph (a) of this section.

§ 238.207 Link between coupling mechanism and car body.

All passenger equipment placed in service for the first time on or after September 8, 2000 shall have a coupler carrier at each end designed to resist a vertical downward thrust from the coupler shank of 100,000 pounds for any normal horizontal position of the coupler, without permanent deformation. For passenger equipment that is connected by articulated joints that comply with the requirements of § 238.205(a), such passenger equipment also complies with the requirements of this section.

§ 238.209 Forward-facing end structure of locomotives.

The skin covering the forward-facing end of each locomotive shall be:

(a) Equivalent to a ½ inch steel plate with a 25,000 pounds-per-square-inch yield strength—material of a higher yield strength may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained;

(b) Designed to inhibit the entry of fluids into the occupied cab area of the equipment; and

(c) Affixed to the collision posts or other main vertical structural members of the forward end structure so as to add to the strength of the end structure.

(d) As used in this section, the term “skin” does not include forward-facing windows and doors.

§ 238.211 Collision posts.

(a) Except as further specified in this paragraph and paragraphs (b) and (c) of this section—

(1) All passenger equipment placed in service for the first time on or after September 8, 2000 shall have either:

(i) Two full-height collision posts, located at approximately the one-third points laterally. Each collision post shall have an ultimate longitudinal shear strength of not less than 300,000 pounds at a point even with the top of the underframe member to which it is attached. If reinforcement is used to provide the shear value, the reinforcement shall have full value for a distance of 18 inches up from the underframe connection and then taper to a point approximately 30 inches above the underframe connection; or

(ii) An equivalent end structure that can withstand the sum of forces that each collision post in paragraph (a)(1)(i) of this section is required to withstand. For analysis purposes, the required forces may be assumed to be evenly distributed at the end structure at the underframe joint.

(2) The requirements of this paragraph do not apply to unoccupied passenger equipment operating in a passenger train.

(b) Each locomotive, including a cab car and an MU locomotive, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have at its forward end, in lieu of the structural protection described in paragraph (a) of this section, either:

(1) Two forward collision posts, located at approximately the one-third points laterally, each capable of withstanding:

(i) A 500,000-pound longitudinal force at the point even with the top of the underframe, without exceeding the ultimate strength of the joint; and

(ii) A 200,000-pound longitudinal force exerted 30 inches above the joint of the post to the underframe, without exceeding the ultimate strength; or

(2) An equivalent end structure that can withstand the sum of the forces that each collision post in paragraph (b)(1)(i) of this section is required to withstand.

(c) The end structure requirements in paragraphs (a) and (b) of this section

apply only to the ends of a semi-permanently coupled consist of articulated units, provided that:

(1) The railroad submits to the FRA Associate Administrator for Safety under the procedures specified in § 238.21 a documented engineering analysis establishing that the articulated connection is capable of preventing disengagement and telescoping to the same extent as equipment satisfying the anti-climbing and collision post requirements contained in this subpart; and

(2) FRA finds the analysis persuasive.

§ 238.213 Corner posts.

(a) Each passenger car shall have at each end of the car, placed ahead of the occupied volume, two full-height corner posts capable of resisting:

(1) A horizontal load of 150,000 pounds at the point of attachment to the underframe without failure;

(2) A horizontal load of 20,000 pounds at the point of attachment to the roof structure without failure; and

(3) A horizontal load of 30,000 pounds applied 18 inches above the top of the floor without permanent deformation.

(b) For purposes of this section, the orientation of the applied horizontal loads shall range from longitudinal inward to transverse inward.

§ 238.215 Rollover strength.

(a) Each passenger car shall be designed to rest on its side and be uniformly supported at the top (“roof rail”), the bottom cords (“side sill”) of the side frame, and, if bi-level, the intermediate floor rail. The allowable stress in the structural members of the occupied volumes for this condition shall be one-half yield or one-half the critical buckling stress, whichever is less. Local yielding to the outer skin of the passenger car is allowed provided that the resulting deformations in no way intrude upon the occupied volume of the car.

(b) Each passenger car shall also be designed to rest on its roof so that any damage in occupied areas is limited to roof sheathing and framing. Other than roof sheathing and framing, the allowable stress in the structural members of the occupied volumes for this condition shall be one-half yield or one-half the critical buckling stress, whichever is less. Deformation to the roof sheathing and framing is allowed to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames.

§ 238.217 Side structure.

Each passenger car shall comply with the following:

(a) *Side posts and corner braces.*

(1) For modified girder, semi-monocoque, or truss construction, the sum of the section moduli in inches³—about a longitudinal axis, taken at the weakest horizontal section between the side sill and side plate—of all posts and braces on each side of the car located between the body corner posts shall be not less than 0.30 multiplied by the distance in feet between the centers of end panels.

(2) For modified girder or semi-monocoque construction only, the sum of the section moduli in inches³—about a transverse axis, taken at the weakest horizontal section between the side sill and side plate—of all posts, braces and pier panels, to the extent available, on each side of the car located between body corner posts shall be not less than 0.20 multiplied by the distance in feet between the centers of end panels.

(3) The center of an end panel is the point midway between the center of the body corner post and the center of the adjacent side post.

(4) The minimum section moduli or thicknesses specified in paragraph (a) of this section may be adjusted in proportion to the ratio of the yield strength of the material used to that of mild open-hearth steel for a car whose structural members are made of a higher strength steel.

(b) *Sheathing.*

(1) Outside sheathing of mild, open-hearth steel when used flat, without reinforcement (other than side posts) in a side frame of modified girder or semi-monocoque construction shall not be less than 1/8 inch nominal thickness. Other metals may be used of a thickness in inverse proportion to their yield strengths.

(2) Outside metal sheathing of less than 1/8 inch thickness may be used only if it is reinforced so as to produce at least an equivalent sectional area at a right angle to reinforcements as that of the flat sheathing specified in paragraph (b)(1) of this section.

(3) When the sheathing used for truss construction serves no load-carrying function, the minimum thickness of that sheathing shall be not less than 40 percent of that specified in paragraph (b)(1) of this section.

§ 238.219 Truck-to-car-body attachment.

Passenger equipment shall have a truck-to-car-body attachment with an ultimate strength sufficient to resist without failure a force of 2g vertical on the mass of the truck and a force of 250,000 pounds in any horizontal

direction on the truck. For purposes of this section, the mass of the truck includes axles, wheels, bearings, the truck-mounted brake system, suspension system components, and any other components attached to the truck by design.

§ 238.221 Glazing.

(a) Passenger equipment shall comply with the applicable Safety Glazing Standards contained in part 223 of this chapter, if required by that part.

(b) Each exterior window on a locomotive cab and a passenger car shall remain in place when subjected to:

(1) The forces described in part 223 of this chapter; and

(2) The forces due to air pressure differences caused when two trains pass at the minimum separation for two adjacent tracks, while traveling in opposite directions, each train traveling at the maximum authorized speed.

§ 238.223 Locomotive fuel tanks.

(a) *External fuel tanks.* External locomotive fuel tanks shall comply with the requirements contained in Appendix D to this part, or an industry standard providing at least an equivalent level of safety if approved by FRA under § 238.21.

(b) *Internal fuel tanks.*

(1) Internal locomotive fuel tanks shall be positioned in a manner to reduce the likelihood of accidental penetration from roadway debris or collision.

(2) Internal fuel tank vent systems shall be designed so they do not become a path of fuel loss in any tank orientation due to a locomotive overturning.

(3) Internal fuel tank bulkheads and skin shall at a minimum be equivalent to a 3/8-inch thick steel plate with a 25,000 pounds-per-square-inch yield strength. Material of a higher yield strength may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained. Skid plates are not required.

§ 238.225 Electrical system.

All passenger equipment shall comply with the following:

(a) *Conductors.* Conductor sizes shall be selected on the basis of current-carrying capacity, mechanical strength, temperature, flexibility requirements, and maximum allowable voltage drop. Current-carrying capacity shall be derated for grouping and for operating temperature.

(b) *Main battery system.*

(1) The main battery compartment 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) If batteries are of the type to potentially vent explosive gases, the battery compartment shall be adequately ventilated to prevent the accumulation of explosive concentrations of these gases.

(c) *Power dissipation resistors.*

(1) Power dissipating resistors shall be adequately ventilated to prevent overheating under worst-case operating conditions as determined by the railroad.

(2) Power dissipation grids shall be designed and installed with sufficient isolation to prevent combustion.

(3) Resistor elements shall be electrically insulated from resistor frames, and the frames shall be electrically insulated from the supports that hold them.

(d) *Electromagnetic interference and compatibility.*

(1) The operating railroad shall ensure electromagnetic compatibility of the safety-critical equipment systems with their environment. Electromagnetic compatibility may be achieved through equipment design or changes to the operating environment.

(2) The electronic equipment shall not produce electrical noise that affects the safe performance of train line control and communications or wayside signaling systems.

(3) To contain electromagnetic interference emissions, suppression of transients shall be at the source wherever possible.

(4) All electronic equipment shall be self-protected from damage or improper operation, or both, due to high voltage transients and long-term over-voltage or under-voltage conditions. This includes protection from both power frequency and harmonic effects as well as protection from radio frequency signals into the microwave frequency range.

§ 238.227 Suspension system.

On or after November 8, 1999—

(a) All passenger equipment shall exhibit freedom from hunting oscillations at all operating speeds. If hunting oscillations do occur, a railroad shall immediately take appropriate action to prevent derailment. For purposes of this paragraph, hunting oscillations shall be considered lateral oscillations of trucks that could lead to a dangerous instability.

(b) All passenger equipment intended for service above 110 mph shall demonstrate stable operation during pre-revenue service qualification tests at all operating speeds up to 5 mph in

excess of the maximum intended operating speed under worst-case conditions—including component wear—as determined by the operating railroad.

(c) Nothing in this section shall affect the requirements of part 213 of this chapter as they apply to passenger equipment as provided in that part.

§ 238.229 Safety appliances.

Except as provided in this part, all passenger equipment continues to be subject to the safety appliance requirements contained in Federal statute at 49 U.S.C. chapter 203 and in Federal regulations at part 231 and § 232.2 of this chapter.

§ 238.231 Brake system.

Except as otherwise provided in this section, on or after September 9, 1999 the following requirements apply to all passenger equipment and passenger trains.

(a) A passenger train's primary brake system shall be capable of stopping the train with a service application from its maximum authorized operating speed within the signal spacing existing on the track over which the train is operating.

(b) The brake system design of passenger equipment ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002, shall not require an inspector to place himself or herself on, under, or between components of the equipment to observe brake actuation or release.

(c) Passenger equipment shall be provided with an emergency brake application feature that produces an irretrievable stop, using a brake rate consistent with prevailing adhesion, passenger safety, and brake system thermal capacity. An emergency brake application shall be available at any time, and shall be initiated by an unintentional parting of the train.

(d) A passenger train brake system shall respond as intended to signals from a train brake control line or lines. Control lines shall be designed so that failure or breakage of a control line will cause the brakes to apply or will result in a default to control lines that meet this requirement.

(e) Introduction of alcohol or other chemicals into the air brake system of passenger equipment is prohibited.

(f) The operating railroad shall require that the design and operation of the brake system results in wheels that are free of condemnable cracks.

(g) Disc brakes shall be designed and operated to produce a surface temperature no greater than the safe operating temperature recommended by

the disc manufacturer and verified by testing or previous service.

(h) *Hand brakes and parking brakes.*

(1) Except for a locomotive that is ordered before September 8, 2000 or placed in service for the first time before September 9, 2002, and except for MU locomotives, all locomotives shall be equipped with a hand or parking brake that can:

- (i) Be applied or activated by hand;
- (ii) Be released by hand; and
- (iii) Hold the loaded unit on the maximum grade anticipated by the operating railroad.

(2) Except for a private car and locomotives addressed in paragraph (h)(1) of this section, all other passenger equipment, including MU locomotives, shall be equipped with a hand brake that meets the requirements for hand brakes contained in part 231 of this chapter and that can:

- (i) Be applied or activated by hand;
- (ii) Be released by hand; and
- (iii) Hold the loaded unit on the maximum grade anticipated by the operating railroad.

(i) Passenger cars shall be equipped with a means to apply the emergency brake that is accessible to passengers and located in the vestibule or passenger compartment. The emergency brake shall be clearly identified and marked.

(j) Locomotives equipped with blended brakes shall be designed so that:

(1) The blending of friction and dynamic brake to obtain the correct retarding force is automatic;

(2) Loss of power or failure of the dynamic brake does not result in exceeding the allowable stopping distance;

(3) The friction brake alone is adequate to safely stop the train under all operating conditions; and

(4) Operation of the friction brake alone does not result in thermal damage to wheels or disc rotor surface temperatures exceeding the manufacturer's recommendation.

(k) For new designs of braking systems, the design process shall include computer modeling or dynamometer simulation of train braking that shows compliance with paragraphs (f) and (g) of this section over the range of equipment operating speeds. A new simulation is required prior to implementing a change in operating parameters.

(l) Locomotives ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002, shall be equipped with effective air coolers or dryers that provide air to the main reservoir with a dew point at

least 10 degrees F. below ambient temperature.

(m) When a passenger train is operated in either direct or graduated release, the railroad shall ensure that all the cars in the train consist are set up in the same operating mode.

§ 238.233 Interior fittings and surfaces.

(a) Each seat in a passenger car shall—

(1) Be securely fastened to the car body so as to withstand an individually applied acceleration of 4g acting in the lateral direction and 4g acting in the upward vertical direction on the deadweight of the seat or seats, if held in tandem; and

(2) Have an attachment to the car body of an ultimate strength capable of resisting simultaneously:

(i) The longitudinal inertial force of 8g acting on the mass of the seat; and

(ii) The load associated with the impact into the seatback of an unrestrained 95th-percentile adult male initially seated behind the seat, when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds.

(b) Overhead storage racks in a passenger car shall provide longitudinal and lateral restraint for stowed articles. Overhead storage racks shall be attached to the car body with sufficient strength to resist loads due to the following individually applied accelerations acting on the mass of the luggage stowed as determined by the railroad:

(1) Longitudinal: 8g;

(2) Vertical: 4g; and

(3) Lateral: 4g.

(c) Other interior fittings within a passenger car shall be attached to the car body with sufficient strength to withstand the following individually applied accelerations acting on the mass of the fitting:

(1) Longitudinal: 8g;

(2) Vertical: 4g; and

(3) Lateral: 4g.

(d) To the extent possible, all interior fittings in a passenger car, except seats, shall be recessed or flush-mounted.

(e) Sharp edges and corners in a locomotive cab and a passenger car shall be either avoided or padded to mitigate the consequences of an impact with such surfaces.

(f) Each seat provided for a crewmember regularly assigned to occupy the cab of a locomotive and each floor-mounted seat in the cab shall be secured to the car body with an attachment having an ultimate strength capable of withstanding the loads due to the following individually applied accelerations acting on the combined mass of the seat and a 95th-percentile adult male occupying it:

- (1) Longitudinal: 8g;
- (2) Lateral: 4g; and
- (3) Vertical: 4g.

(g) If, for purposes of showing compliance with the requirements of this section, the strength of a seat attachment is to be demonstrated through sled testing, the seat structure and seat attachment to the sled that is used in such testing must be representative of the actual seat structure in, and seat attachment to, the rail vehicle subject to the requirements of this section. If the attachment strength of any other interior fitting is to be demonstrated through sled testing, for purposes of showing compliance with the requirements of this section, such testing shall be conducted in a similar manner.

§ 238.235 Doors.

(a) By December 31, 1999, each powered, exterior side door in a vestibule that is partitioned from the passenger compartment of a passenger car shall have a manual override device that is:

- (1) Capable of releasing the door to permit it to be opened without power from inside the car;
- (2) Located adjacent to the door which it controls; and
- (3) Designed and maintained so that a person may readily access and operate the override device from inside the car without requiring the use of a tool or other implement.

(b) Each passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002 shall have a minimum of two exterior side doors, each door providing a minimum clear opening with dimensions of 30 inches horizontally by 74 inches vertically.

Note: The Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles also contain requirements for doorway clearance (See 49 CFR part 38).

Each powered, exterior side door on each such passenger car shall have a manual override device that is:

- (1) Capable of releasing the door to permit it to be opened without power from both inside and outside the car;
- (2) Located adjacent to the door which it controls; and
- (3) Designed and maintained so that a person may access the override device from both inside and outside the car without requiring the use of a tool or other implement.

(c) A railroad may protect a manual override device used to open a powered, exterior door with a cover or a screen capable of removal without requiring the use of a tool or other implement.

(d) *Marking and instructions.*
[Reserved]

§ 238.237 Automated monitoring.

(a) Except as further specified in this paragraph, on or after November 8, 1999 a working alerter or deadman control shall be provided in the controlling locomotive of each passenger train operating in other than cab signal, automatic train control, or automatic train stop territory. If the controlling locomotive is ordered on or after September 8, 2000, or placed into service for the first time on or after September 9, 2002, a working alerter shall be provided.

(b) Alerter or deadman control timing shall be set by the operating railroad taking into consideration maximum train speed and capabilities of the signal system. The railroad shall document the basis for setting alerter or deadman control timing and make this documentation available to FRA upon request.

(c) If the train operator does not respond to the alerter or maintain proper contact with the deadman control, it shall initiate a penalty brake application.

(d) The following procedures apply if the alerter or deadman control fails en route:

(1)(i) A second person qualified on the signal system and brake application procedures shall be stationed in the locomotive cab; or

(ii) The engineer shall be in constant communication with a second crewmember until the train reaches the next terminal.

(2)(i) A tag shall be prominently displayed in the locomotive cab to indicate that the alerter or deadman control is defective, until such device is repaired; and

(ii) When the train reaches its next terminal or the locomotive undergoes its next calendar day inspection, whichever occurs first, the alerter or deadman control shall be repaired or the locomotive shall be removed as the controlling locomotive in the train.

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

§ 238.301 Scope.

(a) This subpart contains requirements pertaining to the inspection, testing, and maintenance of passenger equipment operating at speeds not exceeding 125 miles per hour. The requirements in this subpart address the inspection, testing, and maintenance of the brake system as well as other mechanical and electrical components covered by this part.

(b) Beginning July 12, 2001 the requirements contained in this subpart shall apply to railroads operating Tier I passenger equipment covered by this part. A railroad may request earlier application of the requirements contained in this subpart upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c).

(c) Paragraphs (b) and (c) of § 238.309 shall apply beginning September 9, 1999.

§ 238.303 Exterior calendar day mechanical inspection of passenger equipment.

(a) *General.*

(1) Except as provided in paragraph (f) of this section, each passenger car and each unpowered vehicle used in a passenger train shall receive an exterior mechanical inspection at least once each calendar day that the equipment is placed in service.

(2) Except as provided in paragraph (f) of this section, all passenger equipment shall be inspected as required in this section at least once each calendar day that the equipment is placed in service to ensure that the equipment conforms with the requirement contained in paragraph (e)(15) of this section.

(3) If a passenger car is also classified as a locomotive under part 229 of this chapter, the passenger car shall also receive a daily inspection pursuant to the requirements of § 229.21 of this chapter.

(b) Each passenger car and each unpowered vehicle added to a passenger train shall receive an exterior calendar day mechanical inspection at the time it is added to the train unless documentation is provided to the train crew that an exterior mechanical inspection was performed on the car the previous calendar day.

(c) The exterior calendar day mechanical inspection shall be performed by a qualified maintenance person.

(d) The exterior calendar day mechanical inspection required by this section shall be conducted to the extent possible without uncoupling the trainset and without placing the equipment over a pit or on an elevated track.

(e) As part of the exterior calendar day mechanical inspection, the railroad shall verify conformity with the following conditions, and nonconformity with any such condition renders the passenger car or unpowered vehicle used in a passenger train defective whenever discovered in service:

(1) Products of combustion are released entirely outside the cab and other compartments.

(2) Each battery container is vented and each battery is kept from gassing excessively.

(3) Each coupler is in the following condition:

(i) Sidewall or pin bearing bosses and the pulling face of the knuckles are not broken or cracked;

(ii) The coupler assembly is equipped with anti-creep protection;

(iii) The coupler carrier is not broken or cracked; and

(iv) The yoke is not broken or cracked.

(4) A device is provided under the lower end of all drawbar pins and articulated connection pins to prevent the pin from falling out of place in case of breakage.

(5) The suspension system, including the spring rigging, is in the following condition:

(i) Protective construction or safety hangers are provided to prevent spring planks, spring seats, or bolsters from dropping to the track structure in event of a hanger or spring failure;

(ii) The top (long) leaf or any of the other three leaves of the elliptical spring is not broken, except when a spring is part of a nest of three or more springs and none of the other springs in the nest has its top leaf or any of the other three leaves broken;

(iii) The outer coil spring or saddle is not broken;

(iv) The equalizers, hangers, bolts, gibs, or pins are not cracked or broken;

(v) The coil spring is not fully compressed when the car is at rest;

(vi) The shock absorber is not broken or leaking oil or other fluid; and

(vii) Each air bag or other pneumatic suspension system component inflates or deflates, as applicable, correctly and otherwise operates as intended.

(6) Each truck is in the following condition:

(i) Each tie bar is not loose;

(ii) Each motor suspension lug, equalizer, hanger, gib, or pin is not cracked or broken; and

(iii) The truck frame is not broken and is not cracked in a stress area that may affect its structural integrity.

(7) Each side bearing is in the following condition:

(i) Each friction side bearing with springs designed to carry weight does not have more than 25 percent of the springs in any one nest broken;

(ii) Each friction side bearing does not run in contact unless designed to carry weight; and

(iii) The maximum clearance of each side bearing does not exceed the manufacturer's recommendation.

(8) Each wheel does not have any of the following conditions:

(i) A single flat spot that is 2½ inches or more in length, or two adjoining spots that are each two or more inches in length;

(ii) A gouge or chip in the flange that is more than 1½ inches in length and ½ inch in width;

(iii) A broken rim, if the tread, measured from the flange at a point 5/8 of an inch above the tread, is less than 3¾ inches in width;

(iv) A shelled-out spot 2½ inches or more in length, or two adjoining spots that are each two or more inches in length;

(v) A seam running lengthwise that is within 3¾ inches of the flange;

(vi) A flange worn to a 7/8 inch thickness or less, gauged at a point 3/8 of an inch above the tread;

(vii) A tread worn hollow 5/16 of an inch or more;

(viii) A flange height of 1½ inches or more measured from the tread to the top of the flange;

(ix) A rim less than 1 inch thick;

(x) A crack or break in the flange, tread, rim, plate, or hub;

(xi) A loose wheel; or

(xii) A weld.

(9) No part or appliance of a passenger coach, except the wheels, is less than 2½ inches above the top of the rail.

(10) Each unguarded, noncurrent-carrying metal part subject to becoming charged is grounded or thoroughly insulated.

(11) Each jumper and cable connection is in the following condition:

(i) Each jumpers and cable connection between coaches, between locomotives, or between a locomotive and a coach is located and guarded in a manner that provides sufficient vertical clearance. Jumpers and cable connections may not hang with one end free;

(ii) The insulation is not broken or badly chafed;

(iii) No plug, receptacle, or terminal is broken; and

(iv) No strand of wire is broken or protruding.

(12) Each door and cover plate guarding high voltage equipment is marked "Danger—High Voltage" or with the word "Danger" and the normal voltage carried by the parts so protected.

(13) Each buffer plate is in place.

(14) Each diaphragm, if any, is in place and properly aligned.

(15) Each secondary braking system is in operating mode and does not have any known defective condition which prevents its proper operation. If the dynamic brakes on a locomotive are found not to be in operating mode or are

known to have a defective condition which prevents their proper operation at the time that the exterior mechanical inspection is performed or at any other time while the locomotive is in service, the following requirements shall be met in order to continue the locomotive in service:

(i) MU locomotives equipped with dynamic brakes found not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes shall be handled in the same manner as a running gear defect pursuant to § 238.17.

(ii) Conventional locomotives equipped with dynamic brakes found not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes shall be handled in accordance with the following:

(A) A tag bearing the words "inoperative dynamic brakes" shall be securely displayed in a conspicuous location in the cab of the locomotive and contain the locomotive number, the date and location where the condition was discovered, and the signature of the person discovering the condition;

(B) The locomotive engineer shall be informed in writing that the dynamic brakes on the locomotive are inoperative at the location where the locomotive engineer first takes charge of the train; and

(C) The inoperative or defective dynamic brakes shall be repaired within 3 calendar days of being found in defective condition or at the locomotive's next periodic inspection pursuant to § 229.23 of this chapter, whichever occurs first.

(f) *Exception.* A long-distance intercity passenger train that misses a scheduled exterior calendar day mechanical inspection due to a delay en route may continue in service to the location where the inspection was scheduled to be performed. At that point, an exterior calendar day mechanical inspection shall be performed prior to returning the equipment to service. This flexibility applies only to the exterior mechanical safety inspections required by this section, and does not relieve the railroad of the responsibility to perform a calendar day inspection on a unit classified as a "locomotive" under part 229 of this chapter as required by § 229.21 of this chapter.

(g) *Records.* A record shall be maintained of each exterior calendar day mechanical inspection performed.

(1) This record may be maintained in writing or electronically provided FRA has access to the record upon request.

(2) The written or electronic record must contain the following information:

- (i) The identification number of the unit;
- (ii) The place, date, and time of the inspection;
- (iii) Any non-complying conditions found; and
- (iv) The signature of the inspector.

(3) This record may be part of a single master report covering an entire group of cars and equipment.

(4) This record shall be maintained at the place where the inspection is conducted or at one central location and shall be retained for at least 92 days.

(h) Cars requiring a single car test in accordance with § 238.311 that are being moved in service to a location where the single car test can be performed shall have the single car test completed prior to, or as a part of, the exterior calendar day mechanical inspection.

§ 238.305 Interior calendar day mechanical inspection of passenger cars.

(a) Except as provided in paragraph (d) of this section, each passenger car shall receive an interior mechanical inspection at least once each calendar day that it is placed in service.

(b) The interior calendar day mechanical inspection shall be performed by a qualified person or a qualified maintenance person.

(c) As part of the interior calendar day mechanical inspection, the railroad shall verify conformity with the following conditions, and nonconformity with any such condition renders the car defective whenever discovered in service, except as provided in paragraph (c)(5) of this section:

(1) All fan openings, exposed gears and pinions, exposed moving parts of mechanisms, pipes carrying hot gases and high-voltage equipment, switches, circuit breakers, contactors, relays, grid resistors, and fuses are installed in non-hazardous locations or equipped with guards to prevent personal injury.

(2) The words "Emergency Brake Valve" are legibly stenciled or marked near each brake pipe valve or shown on an adjacent badge plate.

(3) All doors and cover plates guarding high voltage equipment are marked "Danger—High Voltage" or with the word "Danger" and the normal voltage carried by the parts so protected.

(4) All trap doors safely operate and securely latch in place in both the up and down position.

(5) All end doors and side doors operate safely and as intended. If a door is defective and all of the following conditions are satisfied, the car may remain in passenger service until the

next interior calendar day mechanical inspection is due at which time the appropriate repairs shall be made:

(i) A qualified person or a qualified maintenance person determines that the repairs necessary to bring a door into compliance cannot be performed at the time the interior mechanical inspection is conducted;

(ii) A qualified person or a qualified maintenance person determines that it is safe to move the equipment in passenger service;

(iii) At least one operative and accessible door is available on each side of the car; and

(iv) A notice is prominently displayed directly on the defective door indicating that the door is defective.

(6) All safety-related signage is in place and legible.

(7) All vestibule steps are illuminated.

(8) All D rings, pull handles, or other means to access manual door releases are in place based on a visual inspection.

(9) All emergency equipment, including a fire extinguisher, pry bar, auxiliary portable lighting, and first aid kits, as applicable, are in place.

(d) A long-distance intercity passenger train that misses a scheduled calendar day interior mechanical inspection due to a delay en route may continue in service to the location where the inspection was scheduled to be performed. At that point, an interior calendar day mechanical inspection shall be performed prior to returning the equipment to service.

(e) *Records.* A record shall be maintained of each interior calendar day mechanical inspection performed.

(1) This record may be maintained in writing or electronically provided FRA has access to the record upon request.

(2) The written or electronic record must contain the following information:

(i) The identification number of the unit;

(ii) The place, date, and time of the inspection;

(iii) Any non-complying conditions found; and

(iv) The signature of the inspector.

(3) This record may be part of a single master report covering an entire group of cars and equipment.

(4) This record shall be maintained at the place where the inspection is conducted or at one central location and shall be retained for at least 92 days.

§ 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

(a) *General.*

(1) Railroads shall conduct periodic mechanical inspections of all passenger

cars and all unpowered vehicles used in a passenger train as required by this section or as warranted and justified by data developed pursuant to paragraph (a)(2) of this section. A periodic inspection conducted under part 229 of this chapter satisfies the requirement of this section with respect to the features inspected.

(2) A railroad may, upon written notification to FRA's Associate Administrator for Safety, adopt and comply with alternative periodic mechanical inspection intervals for specific components or equipment in lieu of the requirements of this section. Any alternative interval must be based upon a documented reliability assessment conducted under a system safety plan subject to periodic peer audit. (See Appendix E to this part for a discussion of the general principles of reliability-based maintenance programs.) The periodic inspection intervals provided in this section may be changed only when justified by accumulated, verifiable data that provides a high level of confidence that the component(s) will not fail in a manner resulting in harm to persons. FRA may monitor and review a railroad's implementation and compliance with any alternative interval adopted. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's ability to utilize an alternative inspection interval if FRA determines that the adopted interval is not supported by credible data or does not provide adequate safety assurances. Such a determination will be made in writing and will state the basis for such action.

(b) Each periodic mechanical inspection required by this section shall be performed by a qualified maintenance person.

(c) As part of the periodic mechanical inspection the railroad shall verify the condition of the following interior and exterior mechanical components, which shall be inspected not less frequently than every 92 days. At a minimum, this inspection shall determine that:

(1) Floors of passageways and compartments are free from oil, water, waste, or any obstruction that creates a slipping, tripping, or fire hazard, and floors are properly treated to provide secure footing.

(2) Emergency lighting systems are operational.

(3) With regard to switches:

(i) All hand-operated switches carrying currents with a potential of more than 150 volts that may be operated while under load are covered and are operative from the outside of the cover;

(ii) A means is provided to display whether the switches are open or closed; and

(iii) Switches not designed to be operated safely while under load are legibly marked with the voltage carried and the words "must not be operated under load".

(4) All trucks are equipped with a device or securing arrangement to prevent the truck and car body from separating in case of derailment.

(5) All center castings on trucks are not cracked or broken.

(6) All roller bearings do not have any of the following conditions:

(i) A sign of having been overheated as evidenced by discoloration or other telltale sign of overheating such as damage to the seal or distortion of any bearing component;

(ii) A loose or missing cap screw;

(iii) A broken, missing, or improperly applied cap screw lock; or

(iv) A seal that is loose or damaged or permits leakage of lubricant in clearly formed droplets.

(7) All mechanical systems and components of the equipment are free of all the following general conditions that endanger the safety of the crew, passengers, or equipment:

(i) A continuous accumulation of oil or grease;

(ii) Improper functioning of a component;

(iii) A crack, break, excessive wear, structural defect, or weakness of a component;

(iv) A leak;

(v) Use of a component or system under a condition that exceeds that for which the component or system is designed to operate; and

(vi) Insecure attachment of a component.

(8) All of the items identified in the exterior calendar day mechanical inspection contained at § 238.303 are in conformity with the conditions prescribed in that section.

(9) All of the items identified in the interior calendar day mechanical inspection contained at § 238.305 are in conformity with the conditions prescribed in that section.

(d) The periodic mechanical inspection shall specifically include the following interior and exterior mechanical components, which shall be inspected not less frequently than every 184 days. At a minimum, this inspection shall determine that:

(1) Seats and seat attachments are not broken or loose.

(2) Luggage racks are not broken or loose.

(3) All beds and bunks are not broken or loose, and all restraints or safety

latches and straps are in place and function as intended.

(4) A representative sample of emergency window exits on the railroad's passenger cars properly operate, in accordance with the requirements of § 239.107 of this chapter.

(5) Each coupler is in the following condition:

(i) The distance between the guard arm and the knuckle nose is not more than 5½ inches on standard type couplers (MCB contour 1904), or not more than 5⅝ inches on D&E couplers;

(ii) The free slack in the coupler or drawbar not absorbed by friction devices or draft gears is not more than ½ inch; and

(iii) The draft gear is not broken.

(e) The periodic mechanical inspection shall specifically include the manual door releases, which shall be inspected not less frequently than every 368 days. At a minimum, this inspection shall determine that all manual door releases operate as intended.

(f) *Records.* (1) A record shall be maintained of each periodic mechanical inspection required to be performed by this section. This record may be maintained in writing or electronically provided FRA has access to the record upon request. The date and place of the periodic inspection shall be recorded and the person performing the inspection and that person's supervisor shall sign the form, if possible. This record shall be kept in the railroad's files, the cab of the locomotive, or a designated location in the passenger car until the next periodic mechanical inspection of the same type is performed.

(2) Detailed documentation of any reliability assessments depended upon for implementing an alternative inspection interval under paragraph (a)(2) of this section, including underlying data, shall be retained during the period that the alternative inspection interval is in effect. Data documenting inspections, tests, component replacement and renewals, and failures shall be retained for not less than three (3) inspection intervals.

(g) Nonconformity with any of the conditions set forth in this section renders the car or vehicle defective whenever discovered in service.

§ 238.309 Periodic brake equipment maintenance.

(a) *General.*

(1) This section contains the minimum intervals at which the brake equipment on various types of passenger equipment shall be

periodically cleaned, repaired, and tested. This maintenance procedure requires that all of the equipment's brake system pneumatic components that contain moving parts and are sealed against air leaks be removed from the equipment, disassembled, cleaned, and lubricated and that the parts that can deteriorate with age be replaced.

(2) A railroad may petition FRA's Associate Administrator for Safety to approve alternative maintenance procedures providing equivalent safety, in lieu of the requirements of this section. The petition shall be filed as provided in § 238.21.

(b) *MU locomotives.* The brake equipment of each MU locomotive shall be cleaned, repaired, and tested at intervals in accordance with the following schedule:

(1) Every 736 days if the MU locomotive is part of a fleet that is not 100 percent equipped with air dryers;

(2) Every 1,104 days if the MU locomotive is part of a fleet that is 100 percent equipped with air dryers and is equipped with PS-68, 26-C, 26-L, PS-90, CS-1, RT-2, RT-5A, GRB-1, CS-2, or 26-R brake systems. (This listing of brake system types is intended to subsume all brake systems using 26 type, ABD, or ABDW control valves and PS68, PS-90, 26B-1, 26C, 26CE, 26-B1, 30CDW, or 30ECDW engineer's brake valves.); and

(3) Every 736 days for all other MU locomotives.

(c) *Conventional locomotives.* The brake equipment of each conventional locomotive shall be cleaned, repaired, and tested at intervals in accordance with the following schedule:

(1) Every 1,104 days for a locomotive equipped with a 26-L or equivalent brake system; and

(2) Every 736 days for a locomotive equipped with other than a 26-L or equivalent brake system.

(d) *Passenger coaches and other unpowered vehicles.* The brake equipment on each passenger coach and each unpowered vehicle used in a passenger train shall be cleaned, repaired, and tested at intervals in accordance with following schedule:

(1) Every 1,476 days for a coach or vehicle equipped with a 26-C or equivalent brake system; and

(2) Every 1,104 days for a coach or vehicle equipped with other than a 26-C or equivalent brake system.

(e) *Cab cars.* The brake equipment of each cab car shall be cleaned, repaired, and tested at intervals in accordance with the following schedule:

(1) Every 1,476 days for that portion of the cab car brake system using brake

valves that are identical to the passenger coach 26-C brake system;

(2) Every 1,104 days for that portion of the cab car brake system using brake valves that are identical to the locomotive 26-L brake system; and

(3) Every 736 days for all other types of cab car brake valves.

(f) *Records of periodic maintenance.*

(1) The date and place of the cleaning, repairing, and testing required by this section shall be recorded on Form FRA 6180-49A or a similar form developed by the railroad containing the same information, and the person performing the work and that person's supervisor shall sign the form, if possible.

Alternatively, the railroad may stencil the vehicle with the date and place of the cleaning, repairing, and testing and maintain an electronic record of the person performing the work and that person's supervisor.

(2) A record of the parts of the air brake system that are cleaned, repaired, and tested shall be kept in the railroad's files, the cab of the locomotive, or a designated location in the passenger car until the next such periodic test is performed.

§ 238.311 Single car test.

(a) Except for self-propelled passenger cars, single car tests of all passenger cars and all unpowered vehicles used in passenger trains shall be performed in accordance with either APTA Standard SS-M-005-98, "Code of Tests for Passenger Car Equipment Using Single Car Testing Device," published March, 1998; or an alternative procedure approved by FRA pursuant to § 238.21. The incorporation by reference of this APTA standard was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated document from the American Public Transit Association, 1201 New York Avenue, N.W., Washington, D.C. 20005. You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue, N.W., Suite 7000, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C.

(b) Each single car test required by this section shall be performed by a qualified maintenance person.

(c) A railroad shall perform a single car test of the brake system of a car or vehicle described in paragraph (a) of this section if the car or vehicle is found with one or more of the following wheel defects:

- (1) Built-up tread;
- (2) Slid flat wheel;

- (3) Thermal crack;
- (4) Overheated wheel; or
- (5) Shelling.

(d) A railroad need not perform the single car test required in paragraph (c) of this section, if the railroad can establish that the wheel defect is other than built-up tread and is due to a cause other than a defective brake system on the car.

(e) Except as provided in paragraph (f) of this section, a railroad shall perform a single car test of the brake system of a car or vehicle described in paragraph (a) of this section when:

- (1) The car or vehicle is placed in service after having been out of service for 30 days or more; or
- (2) One or more of the following conventional air brake equipment items is removed, repaired, or replaced:

- (i) Relay valve;
- (ii) Service portion;
- (iii) Emergency portion; or
- (iv) Pipe bracket.

(f) *Exception.* If the single car test cannot be made at the point where repairs are made, the car may be moved in passenger service to the next forward location where the test can be made. A railroad may move a car in this fashion only after visually verifying an application and release of the brakes on both sides of the car that was repaired, and provided that the car is appropriately tagged to indicate the need to perform a single car test. The single car test shall be completed prior to, or as a part of, the car's next calendar day mechanical inspection.

(g) If one or more of the following conventional air brake equipment items is removed, repaired, or replaced only that portion which is renewed or replaced must be tested to satisfy the provisions of this section:

- (1) Brake reservoir;
 - (2) Brake cylinder;
 - (3) Piston assembly;
 - (4) Vent valve;
 - (5) Quick service valve;
 - (6) Brake cylinder release valve;
 - (7) Modulating valve or slack adjuster;
- or
- (8) Angle cock or cutout cock.

§ 238.313 Class I brake test.

(a) Each commuter and short-distance intercity passenger train shall receive a Class I brake test once each calendar day that the train is placed or continues in passenger service.

(b) Except as provided in paragraph (i) of this section, each long-distance intercity passenger train shall receive a Class I brake test:

- (1) Prior to the train's departure from an originating terminal; and
- (2) Every 1,500 miles or once each additional calendar day, whichever

occurs first, that the train remains in continuous passenger service.

(c) Each car added to a passenger train shall receive a Class I brake test at the time it is added to the train unless documentation is provided to the train crew that a Class I brake test was performed on the car within the previous calendar day and the car has not been disconnected from a source of compressed air for more than four hours prior to being added to the train.

(d) Each Class I brake test shall be performed by a qualified maintenance person.

(e) Each Class I brake test may be performed either separately or in conjunction with the exterior calendar day mechanical inspection required under § 238.303.

(f) Except as provided in § 238.15(b), a railroad shall not use or haul a passenger train in passenger service from a location where a Class I brake test has been performed, or was required by this part to have been performed, with less than 100 percent operative brakes.

(g) A Class I brake test shall determine and ensure that:

(1) The friction brakes apply and remain applied on each car in the train until a release of the brakes has been initiated on each car in response to train line electric, pneumatic, or other signals. This test shall include a verification that each side of each car's brake system responds properly to application and release signals;

(2) The brake shoes or pads are firmly seated against the wheel or disc with the brakes applied;

(3) Piston travel is within prescribed limits, either by direct observation, observation of an actuator, or by observation of the clearance between the brake shoe and the wheel or between the brake pad and the brake disc with the brakes released;

(4) The communicating signal system is tested and known to be operating as intended;

(5) Each brake shoe or pad is securely fastened and correctly aligned in relation to the wheel or to the disc;

(6) The engineer's brake valve or controller will cause the proper train line commands for each position or brake level setting;

(7) Brake pipe leakage does not exceed 5 pounds per square inch per minute if leakage will affect service performance;

(8) The emergency brake application and deadman pedal or other emergency control devices function as intended;

(9) Each brake shoe or pad is not below the minimum thickness established by the railroad. This

thickness shall not be less than the minimum thickness necessary to safely travel the maximum distance allowed between Class I brake tests;

(10) Each angle cock and cutout cock is properly positioned;

(11) The brake rigging or the system mounted on the car for the transmission of the braking force does not bind or foul so as to impede the force delivered to a brake shoe, impede the release of a brake shoe, or otherwise adversely affect the operation of the brake system;

(12) If the train is equipped with electropneumatic brakes, an electropneumatic application of the brakes is made and the train is walked to determine that the brakes on each car in the train properly apply;

(13) Each brake disc is free of any crack in accordance with the manufacturer's specifications or, if no specifications exist, free of any crack to the extent that the design permits;

(14) If the equipment is provided with a brake indicator, the brake indicator operates as intended; and

(15) The communication of brake pipe pressure changes at the rear of the train is verified.

(h) A qualified maintenance person that performs a Class I brake test on a train shall place in the cab of the controlling locomotive of the train a written statement, which shall be retained in the cab until the next Class I brake test is performed and which shall contain the following information:

(1) The date and time the Class I brake test was performed;

(2) The location where the test was performed;

(3) The identification number of the controlling locomotive of the train; and

(4) The total number of cars inspected during the Class I brake test.

(i) A long-distance, intercity passenger train that misses a scheduled calendar day Class I brake test due to a delay en route may proceed to the point where the Class I brake test was scheduled to be performed. A Class I brake test shall be completed at that point prior to placing the train back in service.

§ 238.315 Class IA brake test.

(a) Except as provided in paragraph (b) of this section, either a Class I or a Class IA brake test shall be performed:

(1) Prior to the first morning departure of each commuter or short-distance intercity passenger train, unless all of the following conditions are satisfied:

(i) A Class I brake test was performed within the previous twelve (12) hours;

(ii) The train has not been used in passenger service since the performance of the Class I brake test; and

(iii) The train has not been disconnected from a source of compressed air for more than four hours since the performance of the Class I brake test; and

(2) Prior to placing a train in service that has been off a source of compressed air for more than four hours.

(b) A commuter or short-distance intercity passenger train that provides continuing late night service that began prior to midnight may complete its daily operating cycle after midnight without performing another Class I or Class IA brake test. A Class I or Class IA brake test shall be performed on such a train before it starts a new daily operating cycle.

(c) A Class I or Class IA brake test may be performed at a shop or yard site and need not be repeated at the first passenger terminal if the train remains on a source of compressed air and in the custody of the train crew.

(d) The Class IA brake test shall be performed by either a qualified person or a qualified maintenance person.

(e) Except as provided in § 238.15(b), a railroad shall not use or haul a passenger train in passenger service from a location where a Class IA brake test has been performed, or was required by this part to have been performed, with less than 100 percent operative brakes.

(f) In performing a Class IA brake test, it shall be determined that:

(1) Brake pipe leakage does not exceed 5 pounds per square inch per minute if brake pipe leakage will affect service performance;

(2) Each brake sets and releases by inspecting in the manner described in paragraph (g) of this section;

(3) On MU equipment, the emergency brake application and the deadman pedal or other emergency control devices function as intended;

(4) Each angle cock and cutout cock is properly set;

(5) Brake pipe pressure changes at the rear of the train are properly communicated to the controlling locomotive; and

(6) The communicating signal system is tested and known to be operating as intended;

(g) In determining whether each brake sets and releases—

(1) The inspection of the set and release of the brakes shall be completed by walking the train to directly observe the set and release of each brake, if the railroad determines that such a procedure is safe.

(2) If the railroad determines that operating conditions pose a safety hazard to an inspector walking the brakes, brake indicators may be used to

verify the set and release on cars so equipped. However, the observation of the brake indicators shall not be made from the cab of the locomotive. The inspector shall walk the train in order to position himself or herself to accurately observe each indicator.

§ 238.317 Class II brake test.

(a) A Class II brake test shall be performed on a passenger train when any of the following events occurs:

(1) Whenever the control stand used to control the train is changed; except if the control stand is changed to facilitate the movement of a passenger train from one track to another within a terminal complex while not in passenger service. In these circumstances, a Class II brake test shall be performed prior to the train's departure from the terminal complex with passengers;

(2) Prior to the first morning departure of each commuter or short-distance intercity passenger train where a Class I brake test remains valid as provided in § 238.315(a)(1);

(3) When previously tested units (i.e., cars that received a Class I brake test within the previous calendar day and have not been disconnected from a source of compressed air for more than four hours) are added to the train;

(4) When cars or equipment are removed from the train; and

(5) When an operator first takes charge of the train, except for face-to-face relief.

(b) A Class II brake test shall be performed by a qualified person or a qualified maintenance person.

(c) Except as provided in § 238.15, a railroad shall not use or haul a passenger train in passenger service from a terminal or yard where a Class II brake test has been performed, or was required by this part to have been performed, with any of the brakes cut-out, inoperative, or defective.

(d) In performing a Class II brake test on a train, a railroad shall determine that:

(1) The brakes on the rear unit of the train apply and release in response to a signal from the engineer's brake valve or controller of the leading or controlling unit, or a gauge located at the rear of the train or in the cab of the rear unit indicates that brake pipe pressure changes are properly communicated at the rear of the train;

(2) On MU equipment, the emergency brake application and deadman pedal or other emergency control devices function as intended; and

(3) The communicating signal system is tested and known to be operating as intended.

§ 238.319 Running brake test.

(a) As soon as conditions safely permit, a running brake test shall be performed on each passenger train after the train has received, or was required under this part to have received, either a Class I, Class IA, or Class II brake test.

(b) A running brake test shall be performed whenever the control stand used to control the train is changed to facilitate the movement of a passenger train from one track to another within a terminal complex while not in passenger service.

(c) The running brake test shall be conducted in accordance with the railroad's established operating rules, and shall be made by applying brakes in a manner that allows the engineer to ascertain whether the brakes are operating properly.

(d) If the engineer determines that the brakes are not operating properly, the engineer shall stop the train and follow the procedures provided in § 238.15.

Subpart E—Specific Requirements for Tier II Passenger Equipment**§ 238.401 Scope.**

This subpart contains specific requirements for railroad passenger equipment operating at speeds exceeding 125 mph but not exceeding 150 mph. The requirements of this subpart apply beginning on September 9, 1999. As stated in § 238.433(b), all such passenger equipment remains subject to the requirements concerning couplers and uncoupling devices contained in Federal statute at 49 U.S.C. chapter 203 and in FRA regulations at part 231 and § 232.2 of this chapter.

§ 238.403 Crash energy management.

(a) Each power car and trailer car shall be designed with a crash energy management system to dissipate kinetic energy during a collision. The crash energy management system shall provide a controlled deformation and collapse of designated sections within the unoccupied volumes to absorb collision energy and to reduce the decelerations on passengers and crewmembers resulting from dynamic forces transmitted to occupied volumes.

(b) The design of each unit shall consist of an occupied volume located between two normally unoccupied volumes. Where practical, sections within the unoccupied volumes shall be designed to be structurally weaker than the occupied volume. During a collision, the designated sections within the unoccupied volumes shall start to deform and eventually collapse in a controlled fashion to dissipate energy

before any structural damage occurs to the occupied volume.

(c) At a minimum, each Tier II passenger train shall be designed to meet the following requirements:

(1) Thirteen megajoules (MJ) shall be absorbed at each end of the train through the controlled crushing of unoccupied volumes, and of this amount a minimum of 5 MJ shall be absorbed ahead of the operator's cab in each power car;

(2) A minimum of an additional 3 MJ shall be absorbed by the power car structure between the operator's cab and the first trailer car; and

(3) The end of the first trailer car adjacent to each power car shall absorb a minimum of 5 MJ through controlled crushing.

(d) For a 30-mph collision of a Tier II passenger train on tangent, level track with an identical stationary train:

(1) When seated anywhere in a trailer car, the velocity at which a 50th-percentile adult male contacts the seat back ahead of him shall not exceed 25 mph; and

(2) The deceleration of the occupied volumes of each trailer car shall not exceed 8g. For the purpose of demonstrating compliance with this paragraph, deceleration measurements may be processed through a low-pass filter having a bandwidth of 50 Hz.

(e) Compliance with paragraphs (a) through (d) of this section shall be demonstrated by analysis using a dynamic collision computer model. For the purpose of demonstrating compliance, the following assumptions shall be made:

(1) The train remains upright, in line, and with all wheels on the track throughout the collision; and

(2) Resistance to structural crushing follows the force-versus-displacement relationship determined during the structural analysis required as part of the design of the train.

(f) Passenger seating shall not be permitted in the leading unit of a Tier II passenger train.

§ 238.405 Longitudinal static compressive strength.

(a) To form an effective crash refuge for crewmembers occupying the cab of a power car, the underframe of the cab of a power car shall resist a minimum longitudinal static compressive force of 2,100,000 pounds without permanent deformation to the cab, unless equivalent protection to crewmembers is provided under an alternate design approach, validated through analysis and testing, and approved by FRA under the provisions of § 238.21.

(b) The underframe of the occupied volume of each trailer car shall resist a

minimum longitudinal static compressive force of 800,000 pounds without permanent deformation to the car. To demonstrate compliance with this requirement, the 800,000-pound load shall be applied to the underframe of the occupied volume as it would be transmitted to the underframe by the full structure of the vehicle.

(c) Unoccupied volumes of a power car or a trailer car designed to crush as part of the crash energy management design are not subject to the requirements of this section.

§ 238.407 Anti-climbing mechanism.

(a) Each power car shall have an anti-climbing mechanism at its forward end capable of resisting an ultimate upward or downward static vertical force of 200,000 pounds. A power car constructed with a crash energy management design is permitted to crush in a controlled manner before the anti-climbing mechanism fully engages.

(b) Interior train coupling points between units, including between units of articulated cars or other permanently joined units of cars, shall have an anti-climbing mechanism capable of resisting an upward or downward vertical force of 100,000 pounds without yielding.

(c) The forward coupler of a power car shall be attached to the car body to resist a vertical downward force of 100,000 pounds for any horizontal position of the coupler without yielding.

§ 238.409 Forward end structures of power car cabs.

This section contains requirements for the forward end structure of the cab of a power car. (A conceptual implementation of this end structure is provided in Figure 1 to this subpart.)

(a) *Center collision post.* The forward end structure shall have a full-height center collision post, or its structural equivalent, capable of withstanding the following:

(1) A shear load of 500,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint;

(2) A shear load of 150,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint; and

(3) A horizontal, longitudinal force of 300,000 pounds, applied at a point on level with the bottom of the windshield, without exceeding its ultimate strength.

(b) *Side collision posts.* The forward end structure shall have two side collision posts, or their structural equivalent, located at approximately the one-third points laterally, each capable of withstanding the following:

(1) A shear load of 500,000 pounds at its joint with the underframe without

exceeding the ultimate strength of the joint; and

(2) A horizontal, longitudinal force of 300,000 pounds, applied at a point on level with the bottom of the windshield, without exceeding its ultimate strength.

(c) *Corner posts.* The forward end structure shall have two full-height corner posts, or their structural equivalent, each capable of withstanding the following:

(1) A horizontal, longitudinal or lateral shear load of 300,000 pounds at its joint with the underframe, without exceeding the ultimate strength of the joint;

(2) A horizontal, lateral force of 100,000 pounds applied at a point 30 inches up from the underframe attachment, without exceeding the yield or the critical buckling stress; and

(3) A horizontal, longitudinal or lateral shear load of 80,000 pounds at its joint with the roof, without exceeding the ultimate strength of the joint.

(d) *Skin.* The skin covering the forward-facing end of each power car shall be:

(1) Equivalent to a 1/2-inch steel plate with a 25,000 pounds-per-square-inch yield strength—material of a higher yield strength may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained;

(2) Securely attached to the end structure; and

(3) Sealed to prevent the entry of fluids into the occupied cab area of the equipment. As used in paragraph (d), the term "skin" does not include forward-facing windows and doors.

§ 238.411 Rear end structures of power car cabs.

The rear end structure of the cab of a power car shall be designed to include the following elements, or their structural equivalent. (A conceptual implementation of this end structure is provided in Figure 2 to this subpart.)

(a) *Corner posts.* The rear end structure shall have two full-height corner posts, or their structural equivalent, each capable of withstanding the following:

(1) A horizontal, longitudinal or lateral shear load of 300,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint; and

(2) A horizontal, longitudinal or lateral shear load of 80,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint.

(b) *Collision posts.* The rear end structure shall have two full-height collision posts, or their structural equivalent, each capable of withstanding the following:

(1) A horizontal, longitudinal shear load of 750,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint; and

(2) A horizontal, longitudinal shear load of 75,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint.

§ 238.413 End structures of trailer cars.

(a) Except as provided in paragraph (b) of this section, the end structure of a trailer car shall be designed to include the following elements, or their structural equivalent. (A conceptual implementation of this end structure is provided in Figure 3 to this subpart.)

(1) *Corner posts.* Two full-height corner posts, each capable of withstanding the following:

(i) A horizontal, longitudinal shear load of 150,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint;

(ii) A horizontal, longitudinal or lateral force of 30,000 pounds applied at a point 18 inches up from the underframe attachment without exceeding the yield or the critical buckling stress; and

(iii) A horizontal, longitudinal or lateral shear load of 20,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint.

(2) *Collision posts.* Two full-height collision posts each capable of withstanding the following:

(i) A horizontal, longitudinal shear load of 300,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint; and

(ii) A horizontal, longitudinal shear load of 60,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint.

(b) If the trailer car is designed with an end vestibule, the end structure inboard of the vestibule shall have two full-height corner posts, or their structural equivalent, each capable of withstanding the following (A conceptual implementation of this end structure is provided in Figure 4 to this subpart):

(1) A horizontal, longitudinal shear load of 200,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint;

(2) A horizontal, lateral force of 30,000 pounds applied at a point 18 inches up from the underframe attachment without exceeding the yield or the critical buckling stress;

(3) A horizontal, longitudinal force of 50,000 pounds applied at a point 18 inches up from the underframe attachment without exceeding the yield or the critical buckling stress; and

(4) A horizontal, longitudinal or lateral shear load of 20,000 pounds at its

joint with the roof without exceeding the ultimate strength of the joint.

§ 238.415 Rollover strength.

(a) Each passenger car and power car shall be designed to rest on its side and be uniformly supported at the top ("roof rail") and the bottom chords ("side sill") of the side frame. The allowable stress in the structural members of the occupied volumes for this condition shall be one-half yield or one-half the critical buckling stress, whichever is less. Minor localized deformations to the outer side skin of the passenger car or power car is allowed provided such deformations in no way intrude upon the occupied volume of each car.

(b) Each passenger car and power car shall also be designed to rest on its roof so that any damage in occupied areas is limited to roof sheathing and framing. The allowable stress in the structural members of the occupied volumes for this condition shall be one-half yield or one-half the critical buckling stress, whichever is less. Deformation to the roof sheathing and framing is allowed to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames.

§ 238.417 Side loads.

(a) Each passenger car body structure shall be designed to resist an inward transverse load of 80,000 pounds of force applied to the side sill and 10,000 pounds of force applied to the belt rail (horizontal members at the bottom of the window opening in the side frame).

(b) These loads shall be considered to be applied separately over the full vertical dimension of the specified member for any distance of 8 feet in the direction of the length of the car.

(c) The allowable stress shall be the lesser of the yield stress, except as otherwise allowed by this paragraph, or the critical buckling stress. In calculating the stress to show compliance with this requirement, local yielding of the side skin adjacent to the side sill and belt rail, and local yielding of the side sill bend radii at the crossbearer and floor-beam connections is allowed. For purposes of this paragraph, local yielding is allowed provided the resulting deformations in no way intrude upon the occupied volume of the car.

(d) The connections of the side frame to the roof and underframe shall support the loads specified in this section.

§ 238.419 Truck-to-car-body and truck component attachment.

(a) The ultimate strength of the truck-to-car-body attachment for each unit in

a train shall be sufficient to resist without failure a vertical force equivalent to 2g acting on the mass of the truck and a force of 250,000 pounds acting in any horizontal direction on the truck.

(b) Each component of a truck (which include axles, wheels, bearings, the truck-mounted brake system, suspension system components, and any other components attached to the truck by design) shall 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.

§ 238.421 Glazing.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, each exterior window on a passenger car and a power car cab shall comply with the requirements contained in part 223 of this chapter.

(b) *Particular end-facing exterior glazing requirements.* Each end-facing exterior window on a passenger car and a power car cab shall also:

(1) Resist the impact of a 12-pound solid steel sphere at the maximum speed at which the vehicle will operate, at an angle of 90 degrees to the window's surface, with no penetration or spall; and

(2) Demonstrate anti-spalling performance by the use of a 0.001 aluminum witness plate, placed 12 inches from the window's surface during all impact tests. The witness plate shall contain no marks from spalled glazing particles after any impact test.

(3) Be permanently marked, prior to installation, in such a manner that the marking is clearly visible after the material has been installed. The marking shall include:

(i) The words "FRA TYPE IHP" to indicate that the material has successfully passed the testing requirements specified in this paragraph;

(ii) The name of the manufacturer; and

(iii) The type or brand identification of the material.

(c) *Passenger equipment ordered prior to May 12, 1999.* Each exterior window in passenger equipment ordered prior to May 12, 1999 may comply with the following glazing requirements in the alternative of the requirements specified in paragraphs (a) and (b) of this section, until the window is replaced and the railroad has exhausted its inventory of replacement windows conforming to the requirements of this paragraph that it held as of May 12, 1999.

(1) Each end-facing exterior window shall resist the impact of a 12-pound solid steel sphere at the maximum speed at which the vehicle will operate, at an angle equal to the angle between the window's surface as installed and the direction of travel, with no penetration or spall.

(2) Each side-facing exterior window shall resist the impact of a:

(i) 12-pound solid steel sphere at 15 mph, at an angle of 90 degrees to the window's surface, with no penetration or spall; and

(ii) A granite ballast stone weighing a minimum of 0.5 pounds, traveling at 75 mph and impacting at a 90-degree angle to the window's surface, with no penetration or spall.

(3) All exterior windows shall:

(i) Resist a single impact of a 9-mm, 147-grain bullet traveling at an impact velocity of 900 feet per second, with no bullet penetration or spall; and

(ii) Demonstrate anti-spalling performance by the use of a 0.001 aluminum witness plate, placed 12 inches from the window's surface during all impact tests. The witness plate shall contain no marks from spalled glazing particles after any impact test.

(iii) Be permanently marked, prior to installation, in such a manner that the marking is clearly visible after the material has been installed. The marking shall include:

(A) The words "FRA TYPE IH" for end-facing glazing or "FRA TYPE IHH" for side-facing glazing, to indicate that the material has successfully passed the testing requirements of this section;

(B) The name of the manufacturer; and

(C) The type or brand identification of the material.

(d) *Glazing securement.* Each exterior window on a passenger car and a power car cab shall remain in place when subjected to:

(1) The forces due to air pressure differences caused when two trains pass at the minimum separation for two adjacent tracks, while traveling in opposite directions, each train traveling at the maximum authorized speed; and

(2) The impact forces that the glazed window is required to resist as specified in this section.

(e) *Stenciling.* Each car that is fully equipped with glazing materials that meet the requirements of this section shall be stenciled on an interior wall as follows: "Fully Equipped with FRA Part 238 Glazing" or similar words conveying that meaning, in letters at least 3/8 of an inch high.

§ 238.423 Fuel tanks.

(a) *External fuel tanks.* Each type of external fuel tank must be approved by FRA's Associate Administrator for Safety upon a showing that the fuel tank provides a level of safety at least equivalent to a fuel tank that complies with the external fuel tank requirements in § 238.223(a).

(b) *Internal fuel tanks.* Internal fuel tanks shall comply with the requirements specified in § 238.223(b).

§ 238.425 Electrical system.

(a) *Circuit protection.*

(1) The main propulsion power line shall be protected with a lightning arrester, automatic circuit breaker, and overload relay. The lightning arrester 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 the 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; however, 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 dissipating 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.

(d) *Electromagnetic interference and compatibility.*

(1) The operating railroad shall ensure electromagnetic compatibility of the safety-critical equipment systems with their environment. Electromagnetic compatibility can be achieved through equipment design or changes to the operating environment.

(2) The electronic equipment shall not produce electrical noise that interferes with trainline control and communications or with wayside signaling systems.

(3) To contain electromagnetic interference emissions, suppression of transients shall be at the source wherever possible.

(4) Electrical and electronic systems of equipment shall be capable of operation in the presence of external electromagnetic noise sources.

(5) All electronic equipment shall be self-protected from damage or improper operation, or both, due to high voltage transients and long-term over-voltage or under-voltage conditions.

§ 238.427 Suspension system

(a) *General requirements.*

(1) Suspension systems shall be designed to reasonably prevent wheel climb, wheel unloading, rail rollover, rail shift, and a vehicle from overturning to ensure safe, stable performance and ride quality. These requirements shall be met:

(i) In all operating environments, and under all track conditions and loading conditions as determined by the operating railroad; and

(ii) At all track speeds and over all track qualities consistent with the Track Safety Standards in part 213 of this chapter, up to the maximum operating speed and maximum cant deficiency of the equipment.

(2) Passenger equipment shall meet the safety performance standards for suspension systems contained in Appendix C to this part, or alternative standards providing at least equivalent safety if approved by FRA under the provisions of § 238.21.

(b) *Lateral accelerations.* Passenger cars shall not operate under conditions that result in a steady-state lateral acceleration of 0.1g (measured parallel to the car floor inside the passenger compartment) or greater.

(c) *Hunting oscillations.* Each truck shall be equipped with a permanently

installed lateral accelerometer mounted on the truck frame. The accelerometer output signals shall be processed through a filter having a band pass of 0.5 to 10 Hz 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 operator, and the train shall be slowed to a speed at least 5 mph less than the speed at which the hunting oscillations stopped. For purposes of this paragraph, hunting oscillations are considered 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.

(d) *Ride vibration (quality).* (1) While traveling at the maximum operating speed over the intended route, the train suspension system shall be designed to:

(i) 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 over a one second period;

(ii) Limit lateral acceleration, as measured by a lateral accelerometer mounted on the car floor, to no greater than 0.3g single event, peak-to-peak over a one second period; and

(iii) Limit the combination of lateral acceleration (a_L) and vertical acceleration (a_v) occurring over a 1 second period as expressed by the square root of ($a_L^2 + a_v^2$) to no greater than 0.6g, where a_L may not exceed 0.3g and (a_v) may not exceed 0.55g.

(2) *Compliance.* Compliance with the requirements contained in this paragraph shall be demonstrated during the equipment pre-revenue service acceptance tests required under § 238.111, and § 213.345 of this chapter.

(3) For purposes of this paragraph, acceleration measurements shall be processed through a filter having a band pass of 0.5 to 10 Hz.

(e) *Overheat sensors.* Overheat sensors for each wheelset journal bearing shall be provided. The sensors may be placed either on-board the equipment or at reasonable intervals along the railroad's right-of-way.

§ 238.429 Safety appliances.

(a) *Couplers.*

(1) The leading and the trailing ends of a semi-permanently coupled trainset shall each 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 the equipment units.

(2) The automatic coupler and uncoupling device on the leading and trailing ends of a semi-permanently coupled trainset may be stored within a removable shrouded housing.

(3) If the units in a train are not semi-permanently coupled, both ends of each unit 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 the equipment units.

(b) *Hand brakes.* Except as provided in paragraph (f) of this section, Tier II trains shall be equipped with a parking or hand brake that can be applied and released manually and that is capable of holding the train on a 3-percent grade.

(c) *Safety appliance mechanical strength and fasteners.*

(1) All handrails, handholds, and sill steps shall be made of 1-inch diameter steel pipe, 3/8-inch thickness steel, or a material of equal or greater mechanical strength.

(2) All safety appliances shall be securely fastened to the car body structure with mechanical fasteners that have mechanical strength greater than or equal to that of a 1/2-inch diameter SAE grade steel bolt mechanical fastener.

(i) Safety appliance mechanical fasteners shall have mechanical strength and fatigue resistance equal to or greater than a 1/2-inch diameter SAE steel bolt.

(ii) Mechanical fasteners shall be installed with a positive means to prevent unauthorized removal. Self-locking threaded fasteners do not meet this requirement.

(iii) Mechanical fasteners shall be installed to facilitate inspection.

(d) *Handrails and handholds.* Except as provided in paragraph (f) of this section:

(1) Handrails shall be provided for passengers on both sides of all steps used to board or depart the train.

(2) Exits on a power vehicle shall be equipped with handrails and handholds so that crewmembers can get on and off the vehicle safely.

(3) Throughout their entire length, handrails and handholds shall be a color that contrasts with the color of the vehicle body to which they are fastened.

(4) The maximum distance above the top of the rail to the bottom of vertical handrails and handholds shall be 51 inches, and the minimum distance shall be 21 inches.

(5) Vertical handrails and handholds shall be installed to continue to a point at least equal to the height of the top edge of the control cab door.

(6) The minimum hand clearance distance between a vertical handrail or handhold and the vehicle body shall be 2½ inches for the entire length.

(7) All vertical handrails and handholds shall be securely fastened to the vehicle body.

(8) If the length of the handrail exceeds 60 inches, it shall be securely fastened to the power vehicle body with two fasteners at each end.

(e) *Sill steps.* Except as provided in paragraph (f) of this section, each power vehicle shall be equipped with a sill step below each exterior door as follows:

(1) The sill step shall have a minimum cross-sectional area of ½ by 3 inches;

(2) The sill step shall be made of steel or a material of equal or greater strength and fatigue resistance;

(3) The minimum tread length of the sill step shall be 10 inches;

(4) The minimum clear depth of the sill step shall be 8 inches;

(5) The outside edge of the tread of the sill step shall be flush with the side of the car body structure;

(6) Sill steps shall not have a vertical rise between treads exceeding 18 inches;

(7) The lowest sill step tread shall be not more than 24, preferably not more than 22, inches above the top of the track rail;

(8) Sill steps shall be a color that contrasts with the color of the power vehicle body to which they are fastened;

(9) Sill steps shall be securely fastened;

(10) At least 50 percent of the tread surface area of each sill step shall be open space; and

(11) The portion of the tread surface area of each sill step which is not open space and is normally contacted by the foot shall be treated with an anti-skid material.

(f) *Exceptions.*

(1) If the units of the equipment are semi-permanently coupled, with uncoupling done only at maintenance facilities, the equipment units that are not required by paragraph (a) of this section to be equipped with automatic couplers need not be equipped with sill steps or end or side handholds that would normally be used to safely perform coupling and uncoupling operations.

(2) If the units of the equipment are not semi-permanently coupled, the units shall be equipped with hand brakes, sill steps, end handholds, and side handholds that meet the requirements contained in § 231.14 of this chapter.

(3) If two trainsets are coupled to form a single train that is not semi-

permanently coupled (i.e., that is coupled by an automatic coupler), the automatically coupled ends shall be equipped with hand brakes, sill steps, end handholds, and side handholds that meet the requirements contained in § 231.14 of this chapter. If the trainsets are semi-permanently coupled, these safety appliances are not required.

(g) *Optional safety appliances.* Safety appliances installed at the option of the railroad shall be firmly attached with mechanical fasteners and shall meet the design and installation requirements provided in this section.

§ 238.431 Brake system.

(a) A passenger train's brake system shall be capable of stopping the train from its maximum operating speed within the signal spacing existing on the track over which the train is operating under worst-case adhesion conditions.

(b) The brake system shall be designed to allow an inspector to determine that the brake system is functioning properly without having to place himself or herself in a dangerous position on, under, or between the equipment.

(c) Passenger equipment shall be provided with an emergency brake application feature that produces an irretrievable stop, using a brake rate consistent with prevailing adhesion, passenger safety, and brake system thermal capacity. An emergency brake application shall be available at any time, and shall be initiated by an unintentional parting of the train. A means to initiate an emergency brake application shall be provided at two locations in each unit of the train; however, where a unit of the train is 45 feet or less in length a means to initiate an emergency brake application need only be provided at one location in the unit.

(d) The brake system shall be designed to prevent thermal damage to wheels and brake discs. The operating railroad shall demonstrate through analysis and testing that no thermal damage results to the wheels or brake discs under conditions resulting in maximum braking effort being exerted on the wheels or discs.

(e) The following requirements apply to blended braking systems:

(1) Loss of power or failure of the dynamic brake does not result in exceeding the allowable stopping distance;

(2) The friction brake alone is adequate to safely stop the train under all operating conditions;

(3) The operational status of the electric portion of the brake system shall

be displayed for the train operator in the control cab; and

(4) The operating railroad shall demonstrate through analysis and testing the maximum operating speed for safe operation of the train using only the friction brake portion of the blended brake with no thermal damage to wheels or discs.

(f) The brake system design shall allow a disabled train's pneumatic brakes to be controlled by a conventional locomotive, during a rescue operation, through brake pipe control alone.

(g) 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 brake system failures to the automated train monitoring system.

(h) Passenger equipment shall be equipped with an adhesion control system designed to automatically adjust the braking force on each wheel to prevent sliding during braking. In the event of a failure of this system to prevent wheel slide within preset parameters, a wheel slide alarm that is visual or audible, or both, shall alert the train operator in the cab of the controlling power car to wheel-slide conditions on any axle of the train.

§ 238.433 Draft system.

(a) Leading and trailing automatic couplers of trains shall be compatible with standard AAR couplers with no special adapters used.

(b) All passenger equipment continues to be subject to the requirements concerning couplers and uncoupling devices contained in Federal Statute at 49 U.S.C. chapter 203 and in FRA regulations at part 231 and § 232.2 of this chapter.

§ 238.435 Interior fittings and surfaces.

(a) Each seat back and seat attachment in a passenger car shall be designed to withstand, with deflection but without total failure, the load associated with the impact into the seat back of an unrestrained 95th-percentile adult male initially seated behind the seat back, when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds.

(b) Each seat back in a passenger car shall include shock-absorbent material to cushion the impact of occupants with the seat ahead of them.

(c) The ultimate strength of each seat attachment to a passenger car body 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 adult male:

- (1) Lateral: 4g; and
- (2) Vertical: 4g.

(d)(1) Other interior fittings shall be attached to the passenger car body with sufficient strength to withstand the following individually applied accelerations acting on the mass of the fitting:

- (i) Longitudinal: 8g;
- (ii) Lateral: 4g; and
- (iii) Vertical: 4g.

(2) Fittings that can be expected to be impacted by a person during a collision, such as tables between facing seats, shall be designed for the mass of the fitting plus the mass of the number of occupants who are 95th-percentile adult males that could be expected to strike the fitting, when the floor of the passenger car decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds.

(e) The ultimate strength of the interior fittings and equipment in power car control cabs shall be sufficient to resist without failure loads due to the following individually applied accelerations acting on the mass of the fitting or equipment:

- (1) Longitudinal: 12g;
- (2) Lateral: 4g; and
- (3) Vertical: 4g.

(f) To the extent possible, interior fittings, except seats, shall be recessed or flush-mounted. Corners and sharp edges shall be avoided or otherwise padded.

(g) Energy-absorbent material shall be used to pad surfaces likely to be impacted by occupants during collisions or derailments.

(h) Luggage stowage compartments shall be enclosed, and have an ultimate strength sufficient to resist loads due to the following individually applied accelerations acting on the mass of the luggage that the compartments are designed to accommodate:

- (1) Longitudinal: 8g;
- (2) Lateral: 4g; and
- (3) Vertical: 4g.

(i) If, for purposes of showing compliance with the requirements of this section, the strength of a seat attachment is to be demonstrated through sled testing, the seat structure and seat attachment to the sled that is used in such testing must be representative of the actual seat structure in, and seat attachment to, the rail vehicle subject to the requirements of this section. If the attachment strength of any other interior fitting is to be demonstrated through sled testing, for purposes of showing compliance with the requirements of this section, such testing shall be conducted in a similar manner.

§ 238.437 Emergency communication.

A means of emergency communication throughout a train shall be provided and shall include the following:

(a) Except as further specified, transmission locations at each end of each passenger car, adjacent to the car's end doors, and accessible to both passengers and crewmembers without requiring the use of a tool or other implement. If the passenger car does not exceed 45 feet in length, only one transmission location is required;

(b) Transmission locations that are clearly marked with luminescent material;

(c) Clear and understandable operating instructions at or near each transmission location; and

(d) Back-up power for a minimum period of 90 minutes.

§ 238.439 Doors.

(a) Each passenger car shall have a minimum of two exterior side doors, each door providing a minimum clear opening with dimensions of 30 inches horizontally by 74 inches vertically.

Note: The Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles also contain requirements for doorway clearance (See 49 CFR part 38).

(b) Each passenger car shall be equipped with a manual override feature for each powered, exterior side door. Each manual override must be:

- (1) Capable of releasing the door to permit it to be opened, without power, from both inside and outside the car;
- (2) Located adjacent to the door which it controls; and
- (3) Designed and maintained so that a person may readily access and operate the override device from both inside and outside the car without the use of any tool or other implement.

(c) The status of each powered, exterior side door in a passenger car shall be displayed to the crew in the operating cab. If door interlocks are used, the sensors used to detect train motion shall be nominally set to operate at 3 mph.

(d) Each powered, exterior side door in a passenger car shall be connected to an emergency back-up power system.

(e) A railroad may protect a manual override device used to open a powered, exterior door with a cover or a screen capable of removal without requiring the use of a tool or other implement.

(f) A passenger compartment end door (other than a door providing access to the exterior of the trainset) shall be equipped with a kick-out panel, pop-out window, or other similar means of

egress in the event the door will not open, or shall be so designed as to pose a negligible probability of becoming inoperable in the event of car body distortion following a collision or derailment.

(g) *Marking and instructions.*
[Reserved]

§ 238.441 Emergency roof entrance location.

(a) Each passenger car and power car cab shall have a minimum of one roof hatch emergency entrance location with a minimum opening of 18 inches by 24 inches, or at least one clearly marked structural weak point in the roof having a minimum opening of the same dimensions to provide quick access for properly equipped emergency response personnel.

(b) *Marking and instructions.*
[Reserved]

§ 238.443 Headlights.

Each power car shall be equipped with at least two headlights. Each headlight shall produce no less than 200,000 candela. One headlight shall be focused to illuminate a person standing between the rails 800 feet ahead of the power car under clear weather conditions. The other headlight shall be focused to illuminate a person standing between the rails 1500 feet ahead of the power car under clear weather conditions.

§ 238.445 Automated monitoring.

(a) Each passenger train shall be equipped to monitor the performance of the following systems or components:

- (1) Reception of cab signals and train control signals;
- (2) Truck hunting;
- (3) Dynamic brake status;
- (4) Friction brake status;
- (5) Fire detection systems;
- (6) Head end power status;
- (7) Alerter or deadman control;
- (8) Horn and bell;
- (9) Wheel slide;
- (10) Tilt system, if so equipped; and
- (11) On-board bearing-temperature sensors, if so equipped.

(b) When any such system or component is operating outside of its predetermined safety parameters:

- (1) The train operator shall be alerted; and
- (2) Immediate corrective action shall be taken, if the system or component defect impairs the train operator's ability to safely operate the train. Immediate corrective action includes limiting the speed of the train.

(c) The monitoring system shall be designed with an automatic self-test feature that notifies the train operator

that the monitoring capability is functioning correctly and alerts the train operator when a system failure occurs.

§ 238.447 Train operator's controls and power car cab layout.

(a) Train operator controls in the power car cab shall be arranged so as to minimize the chance of human error, and be comfortably within view and within easy reach when the operator is seated in the normal train control position.

(b) The train operator's control panel buttons, switches, levers, knobs, and the like shall be distinguishable by sight and by touch.

(c) An alerter shall be provided in the power car cab. If not acknowledged, the alerter shall cause a brake application to stop the train.

(d) Power car 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;

(3) Operator selection shall be required to display other than default information;

(4) Cab or train control signals shall be displayed for the operator; and

(5) Displays shall be readable from the operators's normal position under all lighting conditions.

(e) The power car cab shall be designed so as to permit the crew to have an effective field of view in the forward direction, as well as to the right and left of the direction of travel to observe objects approaching the train from either side. Field-of-view obstructions due to required structural members shall be minimized.

(f) Each seat provided for an employee regularly assigned to occupy a power car cab and any floor-mounted seat in the cab shall be:

(1) Secured to the car body with an attachment having an ultimate strength capable of withstanding the loads due to the following individually applied accelerations acting on the combined mass of the seat and the mass of a seat occupant who is a 95th-percentile adult male:

(i) Longitudinal: 12g;

(ii) Lateral: 4g; and

(iii) Vertical: 4g;

(2) Designed so that all adjustments have the range necessary to accommodate a person ranging from a 5th-percentile adult female to a 95th-percentile adult male, as persons possessing such characteristics are specified, correcting for clothing as appropriate, in any recognized survey after 1958 of weight, height, and other body dimensions of U.S. adults;

(3) Equipped with lumbar support that is adjustable from the seated position;

(4) Equipped with force-assisted, vertical-height adjustment, operated from the seated position;

(5) Equipped with a manually reclining seat back, adjustable from the seated position;

(6) Equipped with an adjustable headrest; and

(7) Equipped with folding, padded armrests.

(g) Sharp edges and corners shall be eliminated from the interior of the power car cab, and interior surfaces of the cab likely to be impacted by an employee during a collision or derailment shall be padded with shock-absorbent material.

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Figure 1—to Subpart E

Power Car Cab Forward End Structure Conceptual Implementation

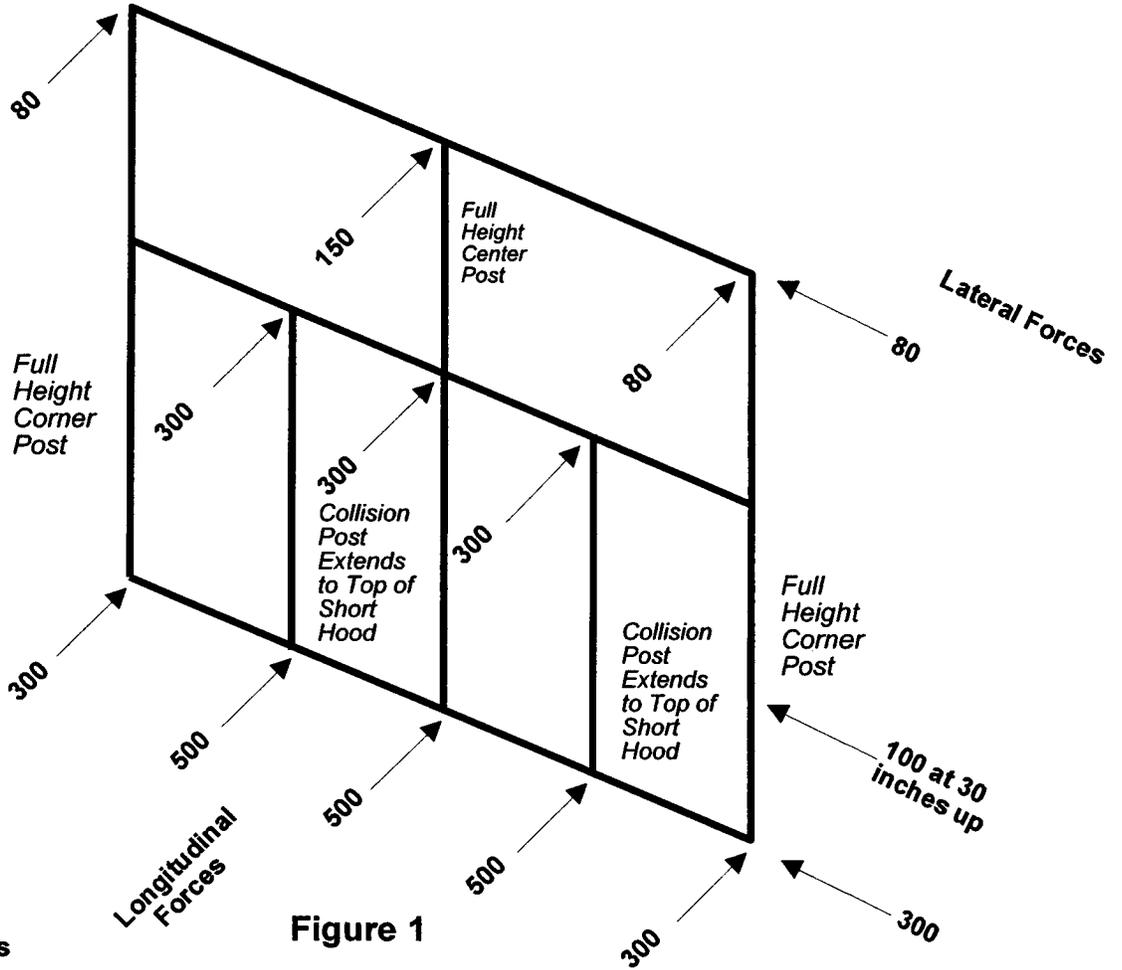


Figure 2—to Subpart E

Power Car Cab Rear End Structure Conceptual Implementation

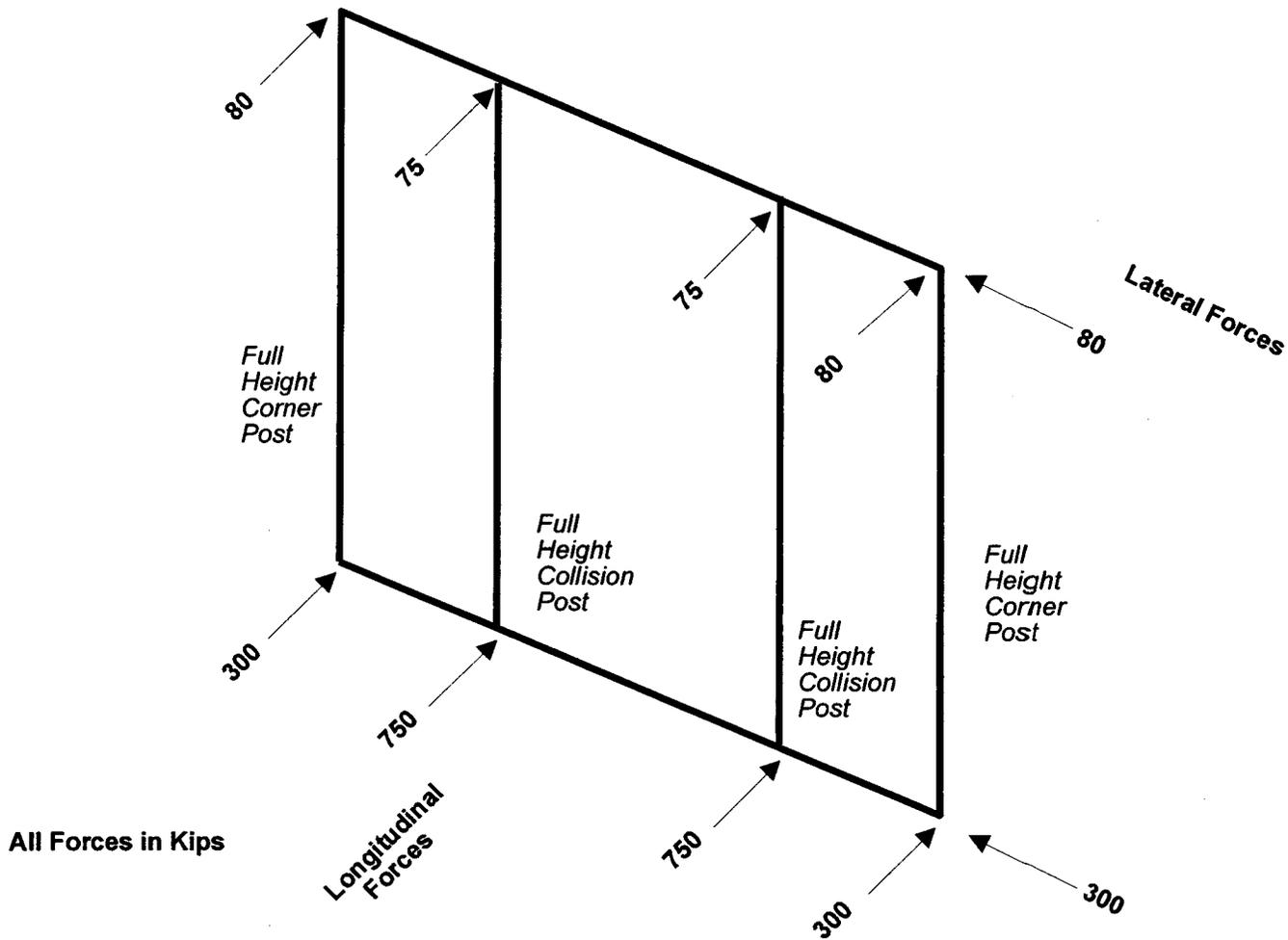


Figure 2

Figure 3—to Subpart E

Trailer Car End Structure Conceptual Implementation

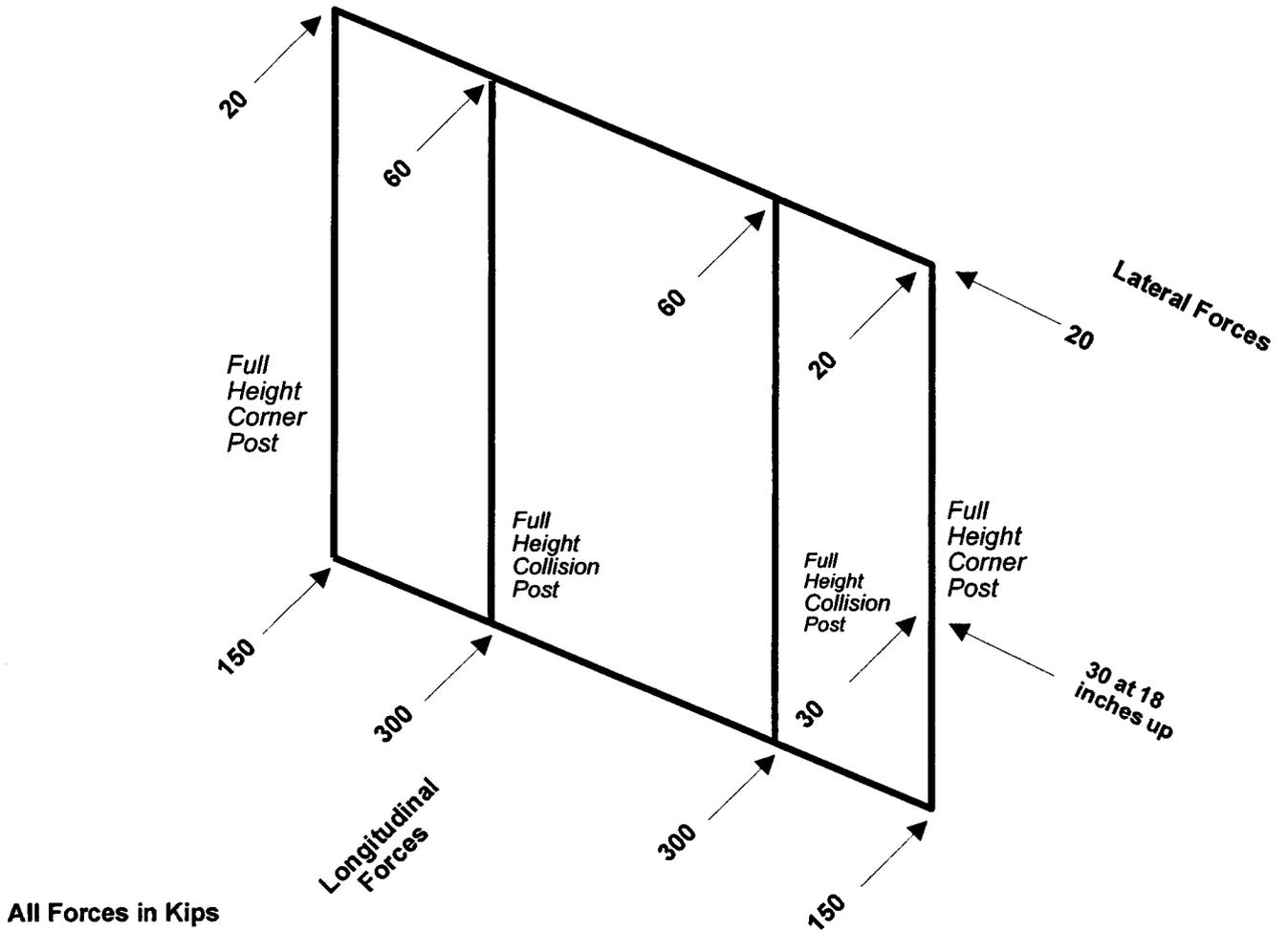


Figure 3

Figure 4—to Subpart E

Trailer Car In-Board Vestibule End Structure Conceptual Implementation

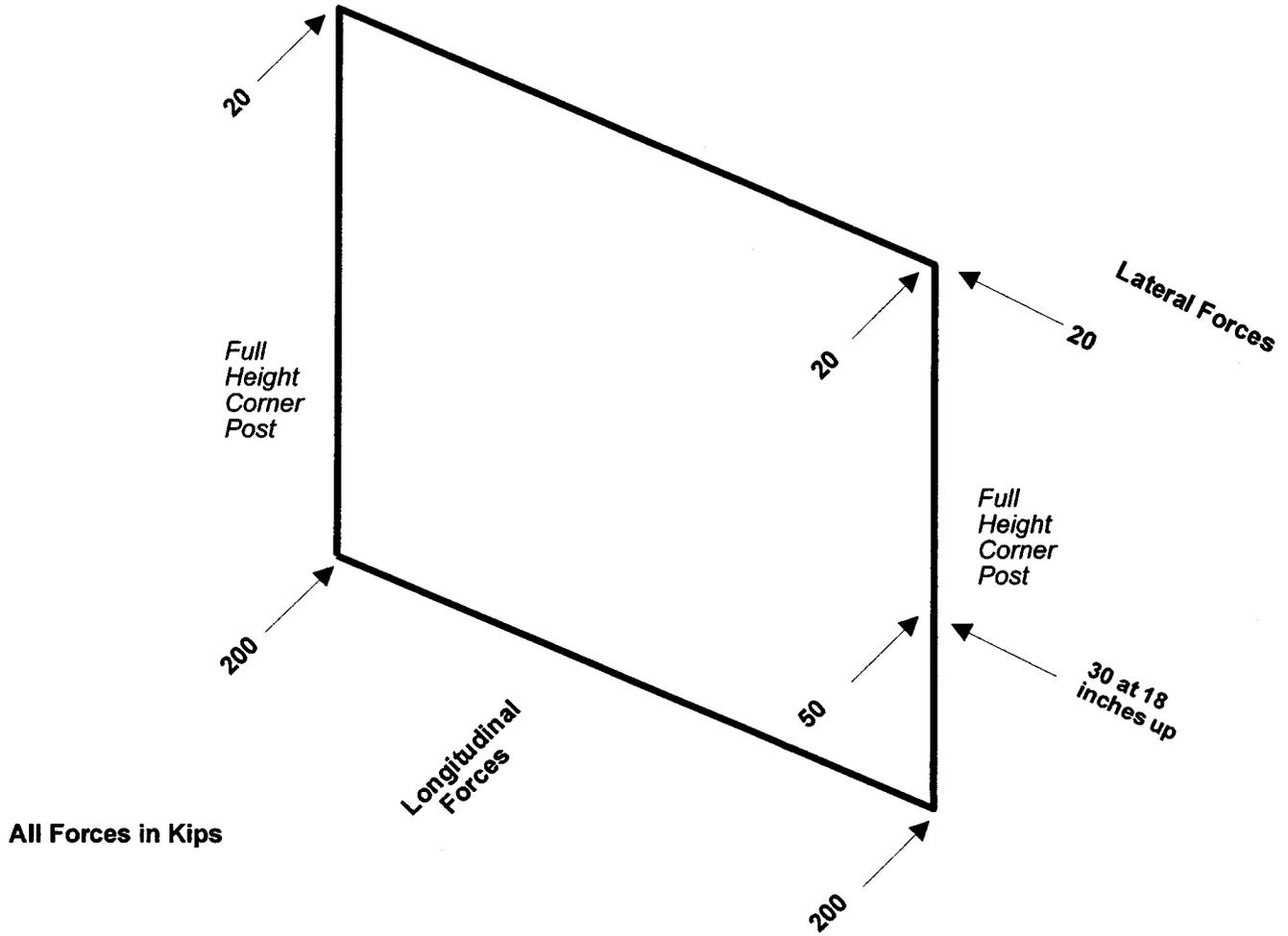


Figure 4

Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment.

§ 238.501 Scope.

This subpart contains inspection, testing, and maintenance requirements for railroad passenger equipment that operates at speeds exceeding 125 mph but not exceeding 150 mph.

§ 238.503 Inspection, testing, and maintenance requirements.

(a) *General.* Under the procedures provided in § 238.505, each railroad shall obtain FRA approval of a written inspection, testing, and maintenance program for Tier II passenger equipment prior to implementation of that program and prior to commencing passenger operations using that equipment. As further specified in this section, the program shall describe in detail the procedures, equipment, and other means necessary for the safe operation of the passenger equipment, including:

- (1) Inspection procedures, intervals, and criteria;
- (2) Testing procedures and intervals;
- (3) Scheduled preventive-maintenance intervals;
- (4) Maintenance procedures;
- (5) Special testing equipment or measuring devices required to perform inspections, tests, and maintenance; and
- (6) The training, qualification, and designation of employees and contractors to perform inspections, tests, and maintenance.

(b) *Compliance.* After the railroad's inspection, testing, and maintenance program is approved by FRA under § 238.505, the railroad shall adopt the program and shall perform—

- (1) The inspections and tests of power brakes and other primary brakes as described in the program;
- (2) The other inspections and tests described in the program in accordance with the procedures and criteria that the railroad identified as safety-critical; and
- (3) The maintenance tasks described in the program in accordance with the procedures and intervals that the railroad identified as safety-critical.

(c) *General safety inspection, testing, and maintenance procedures.* The inspection, testing, and maintenance program under paragraph (a) of this section shall contain the railroad's written procedures to ensure that all systems and components of in service passenger equipment are free of any general condition that endangers the safety of the crew, passengers, or equipment. These procedures shall protect against:

- (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 a condition that exceeds that for which the component or system is designed to operate; and

(6) Insecure attachment of a component.

(d) *Specific inspections.* The program under paragraph (a) of this section shall specify that all Tier II passenger equipment shall receive thorough inspections in accordance with the following standards:

(1) Except as provided in paragraph (d)(3) of this section, the equivalent of a Class I brake test contained in § 238.313 shall be conducted prior to a train's departure from an originating terminal and every 1,500 miles or once each calendar day, whichever comes first, that the train remains in continuous service.

(i) Class I equivalent brake tests shall be performed by a qualified maintenance person.

(ii) Except as provided in § 238.15(b), a railroad shall not use or haul a Tier II passenger train in passenger service from a location where a Class I equivalent brake test has been performed, or was required by this part to have been performed, with less than 100 percent operative brakes.

(2) Except as provided in paragraph (d)(3) of this section, a complete exterior and interior mechanical inspection, in accordance with the railroad's inspection program, shall be conducted by a qualified maintenance person at least once during each calendar day the equipment is used in service.

(3) Trains that miss a scheduled Class I brake test or mechanical inspection due to a delay en route may proceed to the point where the Class I brake test or mechanical inspection was scheduled to be performed.

(e) *Movement of trains with power brake defects.* Movement of trains with a power brake defect as defined in § 238.15 (any primary brake defect) shall be governed by § 238.15.

(f) *Movement of trains with other defects.* Movement of a train with a defect other than a power brake defect shall be conducted in accordance with § 238.17, with the following exception: When a failure of the secondary brake on a Tier II passenger train occurs en route, that train may remain in service until its next scheduled calendar day Class I brake test equivalent at a speed no greater than the maximum safe operating speed demonstrated through

analysis and testing for braking with the friction brake alone. The brake system shall be restored to 100 percent operation before the train departs that inspection location.

(g) *Maintenance intervals.* The program under paragraph (a) of this section shall include the railroad's initial scheduled maintenance intervals for Tier II equipment based on an analysis completed pursuant to the railroad's safety plan. The maintenance interval of a safety-critical component shall be changed only when justified by accumulated, verifiable operating data and approved by FRA under § 238.505 before the change takes effect.

(h) *Training, qualification, and designation program.* The program under paragraph (a) of this section shall describe the training, qualification, and designation program, as defined in the training program plan under § 238.109, established by the railroad to qualify individuals to inspect, test, and maintain the equipment.

(1) If the railroad deems it safety-critical, then only qualified individuals shall inspect, test, and maintain the equipment.

(2) Knowledge of the procedures described in paragraph (a) of this section shall be required to qualify an employee or contractor to perform an inspection, testing, or maintenance task under this part.

(i) *Standard procedures.* The program under paragraph (a) of this section shall include the railroad's written standard procedures for performing all safety-critical equipment inspection, testing, maintenance, and repair tasks necessary to ensure the safe and proper operation of the equipment. The inspection, testing, and maintenance program required by this section is not intended to address and should not include procedures to address employee working conditions that arise in the course of conducting the inspections, tests, and maintenance set forth in the program. When reviewing the railroad's program, FRA does not intend to review any portion of the program that relates to employee working conditions.

(j) *Annual review.* The inspection, testing, and maintenance program required by this section shall be reviewed by the railroad annually.

(k) *Quality control program.* Each railroad shall establish an inspection, testing, and maintenance quality control program enforced by railroad or contractor supervisors to reasonably ensure that inspections, tests, and maintenance are performed in accordance with Federal safety standards and the procedures established by the railroad.

(l) *Identification of safety-critical items.* In the program under paragraph (a) of this section, the railroad shall identify all inspection and testing procedures and criteria as well as all maintenance intervals that the railroad deems to be safety-critical.

§ 238.505 Program approval procedure.

(a) *Submission.* Not less than 90 days prior to commencing passenger operations using Tier II passenger equipment, each railroad to which this subpart applies shall submit for approval an inspection, testing, and maintenance program for that equipment meeting the requirements of this subpart with the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., Mail Stop 25, Washington, D.C. 20590. If a railroad seeks to amend an approved program, the railroad shall file with FRA's Associate Administrator for Safety a petition for approval of such amendment not less than 60 days prior to the proposed effective date of the amendment. A program responsive to the requirements of this subpart or any amendment to the program shall not be implemented prior to FRA approval.

(1) Each program or amendment under § 238.503 shall contain:

(i) The information prescribed in § 238.503 for such program or amendment;

(ii) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the program or amendment; and

(iii) A statement affirming that the railroad has served a copy of the program or amendment on designated representatives of railroad employees, together with a list of the names and addresses of persons served.

(2) Each railroad shall serve a copy of each submission to FRA on designated representatives of railroad employees responsible for the equipment's operation, inspection, testing, and maintenance under this subpart.

(b) *Comment.* Not later than 45 days from the date of filing the program or amendment, any person may comment on the program or amendment.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Three copies of each comment shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., Mail Stop 25, Washington, D.C. 20590.

(3) The commenter shall certify that a copy of the comment was served on the railroad.

(c) *Approval.*

(1) Within 60 days of receipt of each initial inspection, testing, and maintenance program, FRA will conduct a formal review of the program. FRA will then notify the primary railroad contact person and the designated employee representatives in writing whether the inspection, testing, and maintenance program is approved and, if not approved, the specific points in which the program is deficient. If a program is not approved by FRA, the railroad shall amend its program to correct all deficiencies and resubmit its program with the required revisions not later than 45 days prior to commencing passenger operations.

(2) FRA will review each proposed amendment to the program within 45 days of receipt. FRA will then notify the primary railroad contact person and the designated employee representatives in writing whether the proposed amendment has been approved by FRA and, if not approved, the specific points in which the proposed amendment is deficient. The railroad shall correct any deficiencies and file the corrected amendment prior to implementing the amendment.

(3) Following initial approval of a program or amendment, FRA may reopen consideration of the program or amendment for cause stated.

Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment

§ 238.601 Scope.

This subpart contains specific safety planning requirements for the operation of Tier II passenger equipment, procurement of Tier II passenger equipment, and the introduction or major upgrade of new technology in existing Tier II passenger equipment that affects a safety system on such equipment.

§ 238.603 Safety planning requirements

(a) Prior to commencing revenue service operation of Tier II passenger equipment, each railroad shall prepare and execute a written plan for the safe operation of such equipment. The plan may be combined with any other plan required under this part. The plan shall be updated at least every 365 days. At a minimum, the plan shall describe the approaches and processes to:

(1) Identify all requirements necessary for the safe operation of the equipment in its operating environment;

(2) Identify all known or potential hazards to the safe operation of the equipment;

(3) Eliminate or reduce the risk posed by each hazard identified to an acceptable level using MIL-STD-882C as a guide or an alternative formal, safety methodology; and

(4) Impose operational limitations, as necessary, on the operation of the equipment if the equipment cannot meet safety requirements.

(b) For the procurement of Tier II passenger equipment, and for each major upgrade or introduction of new technology in existing Tier II passenger equipment that affects a safety system on such equipment, each railroad shall prepare and execute a written safety plan. The plan may be combined with any other plan required under this part. The plan shall describe the approaches and processes to:

(1) Identify all safety requirements governing the design of the 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 equipment;

(3) Identify safety issues during design reviews;

(4) Eliminate or reduce the risk posed by each hazard identified to an acceptable level using MIL-STD-882C as a guide or an alternative, formal safety methodology;

(5) Monitor the progress in resolving safety issues, reducing hazards, and meeting safety requirements;

(6) Develop a program of testing or analysis, or both, to demonstrate that safety requirements have been met; and

(7) Impose operational limitations, as necessary, on the operation of the equipment if the equipment cannot meet safety requirements.

(c) Each railroad shall maintain sufficient documentation to demonstrate how the operation and design of its Tier II passenger equipment complies with safety requirements or, as appropriate, addresses safety requirements under paragraphs (a)(4) and (b)(7) of this section. Each railroad shall maintain sufficient documentation to track how safety issues are raised and resolved.

(d) Each railroad shall make available to FRA for inspection and copying upon request each safety plan required by this section and any documentation required pursuant to such plan.

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
SUBPART A—GENERAL		
238.15 Movement of power brake defects:		
(b) Improper movement from Class I or IA brake test	5,000	7,500
(c) Improper movement of en route defect	2,500	5,000
(2), (3) Insufficient tag or record	1,000	2,000
(4) Failure to determine percent operative brake	2,500	5,000
(d) Failure to follow operating restrictions	5,000	7,500
(e) Failure to follow restrictions for inoperative front or rear unit	2,500	5,000
238.17 Movement of other than power brake defects: ¹		
(c)(4), (5) Insufficient tag or record	1,000	2,000
(d) Failure to inspect or improper use of roller bearings	2,500	5,000
(e) Improper movement of defective safety appliances	(1)	
238.19 Reporting and tracking defective equipment:		
(a) Failure to have reporting or tracking system	7,500	11,000
(b) Failure to retain records	2,000	4,000
(c) Failure to make records available	1,000	2,000
(d) Failure to list power brake repair points	2,000	4,000
SUBPART B—SAFETY PLANNING AND GENERAL REQUIREMENTS		
238.103 Fire protection plan/fire safety:		
(a) Failure to use proper materials	5,000	7,500
(b) Improper certification	1,000	2,000
(c) Failure to consider fire safety on new equipment	5,000	7,500
(d) Failure to perform fire safety analysis	5,000	7,500
(e) Failure to develop, adopt or comply with procedures	5,000	7,500
238.105 Train hardware and software safety:		
(a), (b), (c) Failure to develop and maintain hardware and software safety program	7,500	11,000
(d) Failure to include required design features in hardware and software	5,000	7,500
(e) Failure to comply with hardware and software safety program	5,000	7,500
238.107 Inspection, testing, and maintenance plan:		
(b) Failure to develop plan	7,500	11,000
(b)(1)–(5) Failure of plan to address specific item	3,000	6,000
(d) Failure to conduct annual review	5,000	7,500
238.109 Training, qualification, and designation program:		
(a) Failure to develop or adopt program	7,500	11,000
(b)(1)–(4) Failure of plan to address specific item	3,000	6,000
(b)(5)–(12) Failure to comply with specific required provision of the program	5,000	7,500
(b)(13) Failure to maintain adequate records	2,500	5,000
238.111 Pre-revenue service acceptance testing plan:		
(a) Failure to properly test previously used equipment	7,500	11,000
(b)(1) Failure to develop plan	7,500	11,000
(b)(2) Failure to submit plan to FRA	5,000	7,500
(b)(3) Failure to comply with plan	5,000	7,500
(b)(4) Failure to document results of testing	5,000	7,500
(b)(5) Failure to correct safety deficiencies or impose operating limits	5,000	7,500
(b)(6) Failure to maintain records	3,000	6,000
(b)(7) Failure to obtain FRA approval	5,000	7,500
238.113 Emergency window exits	2,500	5,000
238.115 Emergency lighting	2,500	5,000
238.117 Protection against personal injury	2,500	5,000
238.119 Rim-stamped straight plate wheels	2,500	5,000
SUBPART C—SPECIFIC REQUIREMENTS FOR TIER I EQUIPMENT		
238.203 Static end strength	2,500	5,000
238.205 Anti-climbing mechanism	2,500	5,000
238.207 Link between coupling mechanism and car body	2,500	5,000
238.209 Forward-facing end structure of locomotives	2,500	5,000
238.211 Collision posts	2,500	5,000
238.213 Corner posts	2,500	5,000
238.215 Rollover strength	2,500	5,000
238.217 Side structure	2,500	5,000
238.219 Truck-to-car-body attachment	2,500	5,000
238.221 Glazing	2,500	5,000
238.223 Fuel tanks	2,500	5,000
238.225 Electrical System	2,500	5,000
238.227 Suspension system	2,500	5,000
238.231 Brake system: (a)–(g), (i)–(m)	2,500	5,000
(h) Hand or parking brake missing or inoperative	5,000	5,000
238.233 Interior fittings and surfaces	2,500	7,500
238.235 Doors	2,500	5,000
238.237 Automated monitoring	2,500	5,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
SUBPART D—INSPECTION, TESTING, AND MAINTENANCE REQUIREMENTS FOR TIER I EQUIPMENT		
238.303 Exterior mechanical inspection of passenger equipment:		
(a)(1) Failure to perform mechanical inspection	12,000	4,000
(a)(2) Failure to inspect secondary brake system	2,500	5,000
(b) Failure to perform inspection on car added to train	12,000	4,000
(c) Failure to utilize properly qualified personnel	2,000	4,000
(e)(1) Products of combustion not released outside cab	2,500	5,000
(e)(2) Battery not vented or gassing excessively	2,500	5,000
(e)(3) Coupler not in proper condition	2,500	5,000
(e)(4) No device under drawbar pins or connection pins	2,500	5,000
(e)(5) Suspension system and spring rigging not in proper condition	2,500	5,000
(e)(6) Truck not in proper condition	2,500	5,000
(e)(7) Side bearing not in proper condition	2,500	5,000
(e)(8) Wheel not in proper condition:		
(i), (iv) Flat spot(s) and shelled spot(s):		
(A) One spot 2½" or more but less than 3" in length	2,500	5,000
(B) One spot 3" or more in length	5,000	7,500
(C) Two adjoining spots each of which is 2" or more in length but less than 2½" in length	2,500	5,000
(D) Two adjoining spots each of which are at least 2" in length, if either spot is 2½" or more in length ..	5,000	7,500
(ii) Gouge or chip in flange:		
(A) More than 1½" but less than 1⅝" in length; and more than ½" but less than ⅝" in width	2,500	5,000
(B) 1⅝" or more in length and ⅝" or more in width	5,000	7,500
(iii) Broken rim	5,000	7,500
(v) Seam in tread	2,500	5,000
(vi) Flange thickness of:	2,500	5,000
(A) ⅞" or less but more than 13/16"		
(B) 13/16" or less	5,000	7,500
(vii) Tread worn hollow	2,500	5,000
(viii) Flange height of:		
(A) 1½" or greater but less than 1⅝"	2,500	5,000
(B) 1⅝" or more	5,000	7,500
(ix) Rim thickness:		
(A) Less than 1"	2,500	5,000
(B) 1⅝" or less	5,000	7,500
(x) Crack or break in flange, tread, rim, plate, or hub:		
(A) Crack of less than 1"	2,500	5,000
(B) Crack of 1" or more	5,000	7,500
(C) Break	5,000	7,500
(xi) Loose wheel	5,000	7,500
(xii) Welded wheel	5,000	7,500
(e)(10) Improper grounding or insulation	5,000	7,500
(e)(11) Jumpers or cable connections not in proper condition	2,500	5,000
(e)(12) Door or cover plate not properly marked	2,500	5,000
(e)(13) Buffer plate not properly placed	2,500	5,000
(e)(14) Diaphragm not properly placed or aligned	2,500	5,000
(e)(15) Secondary braking system not in operating mode or contains known defect	2,500	5,000
(g) Record of inspection:		
(1), (4) Failure to maintain record of inspection	5,000	4,000
(2) Record contains insufficient information	1,000	2,000
238.305 Interior mechanical inspection of passenger cars:		
(a) Failure to perform inspection	11,000	2,000
(b) Failure to utilize properly qualified personnel	1,000	2,000
(c)(1) Failure to protect against personal injury	2,500	5,000
(c)(2) Emergency brake valve not stenciled or marked	2,500	5,000
(c)(3) Door or cover plates not properly marked	2,500	5,000
(c)(4) Trap door unsafe or improperly secured	2,500	5,000
(c)(5) Doors not safely operate as intended	2,500	5,000
(i)–(iv) Condition for operating defective door not satisfied	2,000	4,000
(c)(6) Safety signage not in place or legible	1,000	2,000
(c)(7) Vestibule steps not illuminated	2,000	4,000
(c)(8) Access to manual door release not in place	2,000	4,000
(c)(9) Emergency equipment not in place	1,000	2,000
(e) Record of inspection:		
(1), (4) Failure to maintain record of inspection	2,000	4,000
(2) Record contains insufficient information	1,000	1,000
238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles:		
(a) Failure to perform periodic mechanical inspection	12,500	5,000
(b) Failure to utilize properly qualified personnel	2,500	5,000
(c)(1) Floors not free of condition that creates hazard	2,500	5,000
(c)(2) Emergency lighting not operational	2,500	5,000
(c)(3) Switches not in proper condition	2,500	5,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
(c)(4) Truck not equipped with securing arrangement	2,500	5,000
(c)(5) Truck center casting cracked or broken	5,000	7,500
(c)(6) Roller bearings:		
(i) Overheated	5,000	7,500
(ii) Cap screw loose or missing	2,500	5,000
(iii) Cap screw lock broken or missing	1,000	2,000
(iv) Seal loose, damaged, or leaks lubricant	2,500	5,000
(c)(7) General conditions endangering crew, passengers	2,500	5,000
(d)(1) Seat or seat attachment broken or loose	2,500	5,000
(d)(2) Luggage rack broken or loose	2,500	5,000
(d)(3) Bed, bunks, or restraints broken or loose	2,500	5,000
(d)(4) Emergency window exit not properly operate	2,500	5,000
(d)(5) Coupler not in proper condition	2,500	5,000
(f)(1) Record of inspection:		
(i) Failure to maintain record of inspection	2,000	4,000
(ii) Record contains insufficient information	1,000	2,000
238.309 Periodic brake equipment maintenance:		
(b) Failure to perform on MU locomotive	2,500	5,000
(c) Failure to perform on conventional locomotive	2,500	5,000
(d) Failure to perform on passenger coaches or other unpowered vehicle	2,500	5,000
(e) Failure to perform on cab car	2,500	5,000
(f) Record of periodic maintenance:		
(1), (2) Failure to maintain record or stencil	2,000	4,000
238.311 Single car tests:		
(a) Failure to test in accord with required procedure	2,500	5,000
(b) Failure to utilize properly qualified personnel	2,500	5,000
(c), (e) Failure to perform single car test	2,500	5,000
(f) Improper movement of car for testing	2,000	4,000
(g) Failure to test after repair or replacement of component	2,000	4,000
238.313 Class I brake test:		
(a) Failure to perform on commuter or short distance intercity passenger train	¹ 10,000	15,000
(b) Failure to perform on long-distance intercity passenger train	¹ 10,000	15,000
(c) Failure to perform on cars added to passenger train	¹ 5,000	7,500
(d) Failure to utilize properly qualified personnel	5,000	7,500
(f) Passenger train used from Class I brake test with less than 100% operative brakes	5,000	7,500
(g) Partial failure to perform inspection on a passenger train	5,000	7,500
(h) Failure to maintain record	2,000	4,000
238.315 Class IA brake test:		
(a) Failure to perform inspection	¹ 5,000	7,500
(d) Failure to utilize properly qualified personnel	2,500	5,000
(e) Passenger train used from Class IA brake test with improper percentage of operative brakes	5,000	7,500
(f) Partial failure to perform inspection on passenger train	2,500	5,000
238.317 Class II brake test:		
(a) Failure to perform inspection	¹ 2,500	5,000
(b) Failure to utilize properly qualified personnel	2,500	5,000
(c) Improper use of defective equipment from Class II brake test	2,500	5,000
238.319 Running brake tests:		
(a), (b) Failure to perform test	2,000	4,000
SUBPART E—SPECIFIC REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT		
238.403 Crash energy management	2,500	5,000
238.405 Longitudinal static compressive strength	2,500	5,000
238.407 Anti-climbing mechanism	2,500	5,000
238.409 Forward end structures of power car cabs:		
(a) Center collision post	2,500	5,000
(b) Side collision posts	2,500	5,000
(c) Corner posts	2,500	5,000
(d) Skin	2,500	5,000
238.411 Rear end structures of power car cabs:		
(a) Corner posts	2,500	5,000
(b) Collision posts	2,500	5,000
238.413 End structures of trailer cars	2,500	5,000
238.415 Rollover strength	2,500	5,000
238.417 Side loads	2,500	5,000
238.419 Truck-to-car-body and truck component attachment	2,500	5,000
238.421 Glazing:		
(b) End-facing exterior glazing	2,500	5,000
(c) Alternate glazing requirements	2,500	5,000
(d) Glazing securement	1,000	2,000
(e) Stenciling	2,500	5,000
238.423 Fuel tanks:		

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
(a) External fuel tanks	2,500	5,000
(b) Internal fuel tanks	2,500	5,000
238.425 Electrical system:		
(a) Circuit protection	2,500	5,000
(b) Main battery system	2,500	5,000
(c) Power dissipation resistors	2,500	5,000
(d) Electromagnetic interference and compatibility	2,500	5,000
238.427 Suspension system:		
(a) General design	2,500	5,000
(b) Lateral accelerations	2,500	5,000
(c) Hunting Oscillations	2,500	5,000
(d) Ride vibrations	2,500	5,000
(e) Overheat sensors	2,500	5,000
238.429 Safety Appliances:		
(a) Couplers	5,000	7,500
(b) Hand/parking brakes	5,000	7,500
(d) Handrail and handhold missing	2,500	5,000
(d)(1)–(8) Handrail or handhold improper design	2,500	5,000
(e) Sill step missing	5,000	7,500
(e)(1)–(11) Sill step improper design	2,500	5,000
(g) Optional safety appliances	2,500	5,000
238.431 Brake system	2,500	5,000
238.433 Draft System	2,500	5,000
238.435 Interior fittings and surfaces	2,500	5,000
238.437 Emergency communication	2,500	5,000
238.439 Doors:		
(a) Exterior side doors	2,500	5,000
(b) Manual override feature	2,500	5,000
(c) Notification to crew of door status	2,500	5,000
(d) Emergency back-up power	2,500	5,000
(f) End door kick-out panel or pop-out window	2,500	5,000
(g) Marking and instructions	[Reserved]	
238.441 Emergency roof hatch entrance location	2,500	5,000
238.443 Headlights	2,500	5,000
238.445 Automated monitoring	2,500	5,000
238.447 Train operator's controls and power car cab layout	2,500	5,000
SUBPART F—INSPECTION, TESTING, AND MAINTENANCE REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT		
238.503 Inspection, testing, and maintenance requirements:		
(a) Failure to develop inspection, testing, and maintenance program or obtain FRA approval	10,000	15,000
(b) Failure to comply with provisions of the program	5,000	7,500
(c) Failure to ensure equipment free of conditions which endanger safety of crew, passengers, or equipment ...	2,500	5,000
(d) Specific safety inspections:		
(1)(i) Failure to perform Class I brake test or equivalent	10,000	15,000
(1)(ii) Partial failure to perform Class I brake test or equivalent	5,000	7,500
(2)(i) Failure to perform exterior mechanical inspection	¹ 2,000	4,000
(2)(ii) Failure to perform interior mechanical inspection	¹ 1,000	2,000
(g) Failure to perform scheduled maintenance as required in program	2,500	5,000
(h) Failure to comply with training, qualification and designation program	5,000	7,500
(i) Failure to develop or comply with standard procedures for performing inspection, tests, and maintenance ...	2,500	5,000
(j) Failure to conduct annual review	5,000	7,500
(k) Failure to establish or utilize quality control program	5,000	7,500
SUBPART G—SPECIFIC SAFETY PLANNING REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT		
238.603 Safety plan:		
(a) Failure to develop safety operating plan	7,500	11,000
(b) Failure to develop procurement plan	7,500	11,000
(1)–(7) Failure to develop portion of plan	2,500	5,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
(c) Failure to maintain documentation	2,500	5,000

¹ A penalty may be assessed against an individual only for a willful violation. Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$10,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition for movement of defective equipment set forth in § 238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement. Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in § 238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or § 238.429 concerning the substantive defective condition. The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under § 238.303 and § 238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected. Whereas, the penalties listed for failure to perform the brake inspections and tests under § 238.313 through § 238.319 may be assessed for each train that is not properly inspected.

Appendix B to Part 238—Test Methods and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

This appendix provides the test methods and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs, in accordance with the requirements of § 238.103.

(a) *Incorporation by reference.* Certain documents are incorporated by reference into this appendix with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of each document during normal business hours at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Ave., N.W., Suite 7000 or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. The documents incorporated by reference into this appendix and the sources from which you may obtain these documents are listed below:

(1) American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshohocken, PA 19428-2959.

(i) ASTM C 1166-91, Standard Test Method for Flame Propagation of Dense and Cellular Elastomeric Gaskets and Accessories.

(ii) ASTM D 2724-87, Standard Test Methods for Bonded, Fused, and Laminated Apparel Fabrics.

(iii) ASTM D 3574-95, Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams.

(iv) ASTM D 3675-95, Standard Test Method for Surface Flammability of Flexible Cellular Materials Using a Radiant Heat Energy Source.

(v) ASTM E 119-98, Standard Test Methods for Fire Tests of Building Construction and Materials.

(vi) ASTM E 162-98, Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy Source.

(vii) ASTM E 648-97, Standard Test Method for Critical Radiant Flux of Floor-Covering Systems Using a Radiant Heat Energy Source.

(viii) ASTM E 662-97, Standard Test Method for Specific Optical Density of Smoke Generated by Solid Materials.

(ix) ASTM E 1354-97, Standard Test Method for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter.

(x) ASTM E 1537-98, Standard Test Method for Fire Testing of Upholstered Seating Furniture.

(2) General Services Administration, Federal Supply Service, Specification Section, 470 E. L'Enfant Plaza, S.W., Suite 8100, Washington, D.C., 20407. FED-STD-191A—Textile Test Method 5830, Leaching Resistance of Cloth; Standard Method (July 20, 1978).

(3) National Electrical Manufacturers Association (NEMA), 1300 North 17th St, Suite 1847, Rosslyn, VA 22209. NEMA WC 3/ICEA S-19-1981, Rubber Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy (part 6, section 19, paragraph 6), Revision 1, Sixth Edition (February, 1994).

(4) State of California, Department of Consumer Affairs, Bureau of Home Furnishings and Thermal Insulation, 3485 Orange Grove Avenue, North Highlands, CA 95660. California Technical Bulletin 133, Flammability Test Procedure for Seating Furniture for Use in Public Occupancies (January, 1991).

(5) The Institute of Electrical and Electronics Engineers, Inc. (IEEE), 345 East 47th Street, New York, New York 10017. ANSI/IEEE Std. 383-1974, IEEE Standard for Type Test of Class 1E Electric Cables, Field Splices, and Connections for Nuclear Power Generating Stations (1974).

(6) Underwriters Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.

(i) UL 44, Standard for Safety for Thermoset-Insulated Wires and Cables, 14th edition (January 27, 1997).

(ii) UL 83, Standard for Safety for Thermoplastic-Insulated Wires and Cables, 12th edition (September 29, 1998).

(b) *Definitions.* As used in this appendix—
Critical radiant flux (C.R.F.) 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×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.

Peak heat release rate (q''_{max}) means, as defined in ASTM E 1354, the maximum heat release rate per unit (kW/m²).

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/cm² for a specified period of time.

Surface flammability means the rate at which flames will travel along surfaces.

Time to ignition (t_{ig}) means, as defined in ASTM E 1354, the time in seconds (s) to sustained flaming.

Time to ignition/Peak heat release rate (t_{ig}/q''_{max}) means the ratio of a given material's time to ignition to its peak (maximum) heat release rate as measured in the Cone Calorimeter (ASTM E 1354) under the stipulated exposure conditions.

(c) *Required test methods and performance criteria.* The materials used in locomotive cabs and passenger cars shall be tested according to the methods and meet the performance criteria set forth in the following table and notes:

**Test Procedures and Performance Criteria for the Flammability and Smoke Emission
Characteristics of Materials Used in Passenger Cars and Locomotive Cabs**

CATEGORY	FUNCTION OF MATERIAL	TEST METHOD	PERFORMANCE CRITERIA
Cushions, Mattresses	All ^{1, 2, 3, 4, 5, 6, 7, 8}	ASTM D 3675-95	$I_s \leq 25$
		ASTM E 662-97	$D_s (1.5) \leq 100$ $D_s (4.0) \leq 175$
Fabrics	All ^{1, 2, 3, 6, 7, 8}	14 CFR 25, Appendix F, Part I, (vertical test)	Flame time ≤ 10 seconds Burn length ≤ 6 inches
		ASTM E 662-97	$D_s (4.0) \leq 200$
Vehicle Components ^{9, 10, 11, 12}	All except flexible cellular foams, floor coverings, light transmitting plastics, and items addressed under other specific categories ^{1, 2}	ASTM E 162-98	$I_s \leq 35$
		ASTM E 662-97	$D_s (1.5) \leq 100$ $D_s (4.0) \leq 200$
	Flexible cellular foams ^{1, 2}	ASTM D 3675-95	$I_s \leq 25$
		ASTM E 662-97	$D_s (1.5) \leq 100$ $D_s (4.0) \leq 175$
	Floor covering ^{13, 14}	ASTM E 648-97	C.R.F. ≥ 5 kW/m ²
		ASTM E 662-97	$D_s (1.5) \leq 100$ $D_s (4.0) \leq 200$
	Light transmitting plastics ^{2, 15}	ASTM E 162-98	$I_s \leq 100$
		ASTM E 662-97	$D_s (1.5) \leq 100$ $D_s (4.0) \leq 200$
	Elastomers ¹⁶	ASTM C 1166-91	Pass
		ASTM E 662-97	$D_s (1.5) \leq 100$ $D_s (4.0) \leq 200$
Wire and Cable	Low voltage wire and cable	NEMA WC 3/ ICEA S-19-1981, paragraph 6.19.6; or UL 44 and UL 83 ¹⁷	Pass
		ASTM E 662-97	$D_s (4.0) \leq 200$ (flaming) $D_s (4.0) \leq 75$ (non-flaming)
	Power cable	ANSI/IEEE Std 383-1974 ¹⁸	Pass
		ASTM E 662-97	$D_s (4.0) \leq 200$ (flaming) $D_s (4.0) \leq 75$ (non-flaming)
Structural Components ¹⁹	Flooring ²⁰ , Other ²¹	ASTM E 119-98	Pass

¹ Materials tested for surface flammability shall not exhibit any flaming running or dripping.

² The ASTM E 662-97 maximum test limits for smoke emission (specific optical density) shall be measured in either the flaming or non-flaming mode, utilizing the mode which generates the most smoke.

³ Testing of a complete seat or mattress assembly (including cushions, fabric layers, upholstery) according to ASTM E 1537-98 with application of pass/fail criteria of California Technical Bulletin 133 shall be permitted in lieu of the test methods prescribed herein, provided the assembly component units remain unchanged or new (replacement) assembly components possess equivalent fire performance properties to the original components tested. A fire hazard analysis must also be conducted that considers the operating environment within which the seat or mattress assemblies will be used in relation to the risk of vandalism, puncture, cutting, or other acts which may expose the individual components of the assemblies.

⁴ Testing is performed without upholstery.

⁵ The surface flammability and smoke emission characteristics shall be demonstrated to be permanent after dynamic testing according to ASTM D 3574-95, Test I₂ (Dynamic Fatigue Test by the Roller Shear at Constant Force) or Test I₃ (Dynamic Fatigue Test by Constant Force Pounding) both using Procedure B.

⁶ The surface flammability and smoke emission characteristics shall be demonstrated to be permanent by washing, if appropriate, according to FED-STD-191A Textile Test Method 5830.

⁷ The surface flammability and smoke emission characteristics shall be demonstrated to be permanent by dry-cleaning, if appropriate, according to ASTM D 2724-87.

⁸ Materials that cannot be washed or dry-cleaned shall be so labeled and shall meet the applicable performance criteria after being cleaned as recommended by the manufacturer.

⁹ As a minimum, combustible component materials required to be tested include seat and mattress frames, wall and ceiling panels, seat and toilet shrouds, tray and other tables, partitions, shelves, windscreens, HVAC ducting, thermal and acoustic insulation, exterior plastic components, and interior and exterior box covers.

¹⁰ Materials used to fabricate miscellaneous, discontinuous small parts (such as knobs, rollers, fasteners, clips, grommets, and small electrical parts) that will not contribute materially to fire growth in end use configuration may be exempted from fire and smoke emission performance requirements, provided that the surface area of any individual small part is not ≥ 16 square inches (100 cm²) in end use configuration and an appropriate fire hazard analysis is conducted which addresses the location and quantity of the materials used, and the vulnerability of the materials to ignition and contribution of flame spread.

¹¹ If the surface area of any individual small part is less than 16 square inches (100 cm²) in end use configuration, materials used

to fabricate such small part shall be tested in accordance with ASTM E 1354-97, unless such small part has been shown not to contribute materially to fire growth following an appropriate fire hazard analysis as specified in Note 10. Materials tested in accordance with ASTM E 1354-97 shall meet the performance criteria of $t_{ig}/q_{max} \leq 1.5$. Testing shall be at 50 kW/m² applied heat flux.

¹² Assessment of smoke generation by small miscellaneous, discontinuous parts may be made by utilizing the results from the ASTM E1354-97 test procedure conducted in accordance with Note 11, rather than the ASTM E 662-97 test procedure, if an appropriate fire hazard analysis is provided which addresses the location and quantity of the materials used, and the vulnerability of the materials to ignition and contribution of smoke spread.

¹³ Carpeting used as a wall or ceiling covering shall be tested as a vehicle component.

¹⁴ Floor covering shall be tested with padding in accordance with ASTM E 648-97, if the padding is used in the actual installation.

¹⁵ For double window glazing, only the interior glazing is required to meet the materials requirements specified herein. (The exterior glazing need not meet these requirements.)

¹⁶ Elastomeric materials used for parts having a surface area ≥ 16 square inches (100 cm²) shall be tested in accordance with ASTM C 1166-91. As a minimum, parts required to be tested include window gaskets, door nosing, diaphragms, and roof mats.

¹⁷ Testing shall be conducted in accordance with NEMA WC 3/ICEA S-19-1981, paragraph 6.19.6; or UL 44 for thermosetting wire insulation and UL 83 for thermoplastic wire insulation.

¹⁸ Testing shall be conducted in accordance with ANSI/IEEE Standard 383-1974, section 2.5, with the additional requirement that circuit integrity shall continue for 5 minutes after the start of the test.

¹⁹ Penetrations (ducts, etc.) shall be designed to prevent fire and smoke from entering a vehicle, and representative penetrations shall be included as part of test assemblies.

²⁰ Structural flooring assemblies shall meet the performance criteria during a nominal test period as determined by the railroad. The nominal test period must be twice the maximum expected time period under normal circumstances for a vehicle to stop completely and safely from its maximum operating speed, plus the time necessary to evacuate all the vehicle's occupants 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 the specimen represents a true test of the ability of the structural flooring assembly to perform as a barrier against under-vehicle fires. The fire resistance period required shall be consistent with the safe evacuation of a full load of passengers from the vehicle under worst-case conditions.

²¹ Portions of the vehicle body (including equipment carrying portions of a vehicle's roof but not including floors) which separate major ignition sources, energy sources, or sources of fuel-load from vehicle interiors, shall have sufficient fire endurance as determined by a fire hazard analysis acceptable to the railroad which addresses the location and quantity of the materials used, as well as vulnerability of the materials to ignition, flame spread, and smoke generation.

Appendix C to Part 238—Suspension System Safety Performance Standards

This appendix contains the minimum suspension system safety performance standards for Tier II passenger equipment as required by § 238.427. These requirements shall be the basis for evaluating suspension system safety performance until an industry standard acceptable to FRA is developed and approved under the procedures provided in § 238.21.

(a) Passenger equipment suspension systems shall be designed to limit the lateral and vertical forces and lateral to vertical (L/V) ratios, for the time duration required to travel five feet at any operating speed or over any class of track, under all operating conditions as determined by the railroad, as follows:

(1) The maximum single wheel lateral to vertical force (L/V) ratio shall not exceed Nadal's limit as follows:

$$\text{Wheel L/V} \leq \frac{\tan(\delta) - \mu}{1 + \mu \tan(\delta)}$$

where: δ = flange angle (deg).
 μ = coefficient of friction of 0.5.

(2) The net axle lateral force shall not exceed 0.5 times the static vertical axle load.

(3) The vertical wheel/rail force shall not be less than or equal to 10 percent of the static vertical wheel load.

(4) The sum of the vertical wheel loads on one side of any truck shall not be less than or equal to 20 percent of the static vertical axle load. This shall include the effect of a crosswind allowance as specified by the railroad for the intended service.

(5) The maximum truck side L/V ratio shall not exceed 0.6.

(6) When stopped on track with a uniform 6-inch superelevation, vertical wheel loads, at all wheels, shall not be less than or equal to 60 percent of the nominal vertical wheel load on level track.

(b) For purposes of this appendix, wheel/rail force measurements shall be processed through a low pass filter having a cut-off frequency of 25 Hz.

Appendix D to Part 238—Requirements for External Fuel Tanks on Tier I Locomotives

The requirements contained in this appendix are intended to address the structural and puncture resistance properties of the locomotive fuel tank to reduce the risk of fuel spillage to acceptable levels under derailment and minor collision conditions.

(a) *Structural strength.*

(1) *Load case 1—minor derailment.* The end plate of the fuel tank shall support a

sudden loading of one-half the weight of the car body at a vertical acceleration of 2g, without exceeding the ultimate strength of the material. The load is assumed to be supported on one rail, within an eight inch band (plus or minus) at a point nominally above the head of the rail, on tangent track. Consideration should be given in the design of the fuel tank to maximize the vertical clearance between the top of the rail and the bottom of the fuel tank.

(2) *Load case 2—jackknifed locomotive.* The fuel tank shall support transversely at the center a sudden loading equivalent to one half the weight of the locomotive at a vertical acceleration of 2g, without exceeding the ultimate strength of the material. The load is assumed to be supported on one rail, distributed between the longitudinal center line and the edge of the tank bottom, with a rail head surface of two inches.

(3) *Load case 3—side impact.* In a side impact collision by an 80,000 pound Gross Vehicle Weight tractor/trailer at the longitudinal center of the fuel tank, the fuel tank shall withstand, without exceeding the ultimate strength, a 200,000 pound load (2.5g) distributed over an area of six inches by forty-eight inches (half the bumper area) at a height of thirty inches above the rail (standard DOT bumper height).

(4) *Load case 4—penetration resistance.* The minimum thickness of the sides, bottom sheet and end plates of the fuel tank shall be equivalent to a $\frac{5}{16}$ -inch steel plate with a 25,000 pounds-per-square-inch yield strength (where the thickness varies inversely with the square root of yield strength). The lower one third of the end plates shall have the equivalent penetration resistance by the above method of a $\frac{3}{4}$ -inch steel plate with a 25,000 pounds-per-square-inch yield strength. This may be accomplished by any combination of materials or other mechanical protection.

(b) *Sideswipe.* To minimize fuel tank damage during sideswipes (railroad vehicles and grade crossings), all drain plugs, clean-out ports, inspection covers, sight glasses, gauge openings, etc., must be flush with the tank surface or adequately protected to avoid catching foreign objects or breakage. All seams must be protected or flush to avoid catching foreign objects.

(c) *Spill controls.* Vents and fills shall be designed to avert spillage of fuel in the event of a roll over.

Appendix E to Part 238—General Principles of Reliability-Based Maintenance Programs

(a) Any maintenance program has the following four basic objectives:

(1) To ensure realization of the design level of safety and reliability of the equipment;

(2) To restore safety and reliability to their design levels when deterioration has occurred;

(3) To obtain the information necessary for design improvements of those items whose design reliability proves inadequate; and

(4) To accomplish these goals at a minimum total cost, including maintenance costs and the costs of residual failures.

(b) Reliability-based maintenance programs are based on the following general principles. A failure is an unsatisfactory condition.

There are two types of failures: functional and potential. Functional failures are usually reported by operating crews. Conversely, maintenance crews usually discover potential failures. A potential failure is an identifiable physical condition, which indicates that a functional failure is imminent. The consequences of a functional failure determine the priority of a maintenance effort. These consequences fall into the following general categories:

(1) Safety consequences, involving possible loss of the equipment and its occupants;

(2) Operational consequences, which involve an indirect economic loss as well as the direct cost of repair;

(3) Non-operational consequences, which involve only the direct cost of repair; or

(4) Hidden failure consequences, which involve exposure to a possible multiple failure as a result of the undetected failure of a hidden function.

(c) In a reliability-based maintenance program, scheduled maintenance is required for any item whose loss of function or mode of failure could have safety consequences. If preventative tasks cannot reduce the risk of such failures to an acceptable level, the item requires redesign to alter its failure consequences. Scheduled maintenance is also required for any item whose functional failure will not be evident to the operating crew, and therefore reported for corrective action. In all other cases the consequences of failure are economic, and maintenance tasks directed at preventing such failures must be justified on economic grounds. All failure consequences, including economic consequences, are established by the design characteristics of the equipment and can be altered only by basic changes in the design. Safety consequences can, in nearly all cases, be reduced to economic consequences by the use of redundancy. Hidden functions can usually be made evident by instrumentation or other design features. The feasibility and cost effectiveness of scheduled maintenance depend on the inspectability of the component, and the cost of corrective maintenance depends on its failure modes and design reliability.

(d) The design reliability of equipment or components will only be achieved with an effective maintenance program. This level of reliability is established by the design of each component and the manufacturing processes that produced it. Scheduled maintenance can ensure that design reliability of each component is achieved, but maintenance alone cannot yield a level of reliability beyond the design reliability.

(e) When a maintenance program is developed, it includes tasks that satisfy the criteria for both applicability and effectiveness. The applicability of a task is determined by the characteristics of the component or equipment to be maintained. The effectiveness is stated in terms of the consequences that the task is designed to prevent. The basic types of tasks that are performed by maintenance personnel are each applicable under a unique set of conditions. Tasks may be directed at

preventing functional failures or preventing a failure event consisting of the sequential occurrence of two or more independent failures which may have consequences that would not be produced by any of the failures occurring separately. The task types include:

(1) Inspections of an item to find and correct any potential failures;

(2) Rework/remanufacture/overhaul of an item at or before some specified time or age limit;

(3) Discard of an item (or parts of it) at or before some specified life limit; and

(4) Failure finding inspections of a hidden-function item to find and correct functional failures that have already occurred but were not evident to the operating crew.

(b) Components or systems in a reliability-based maintenance program may be defined as simple or complex. A simple component or system is one that is subject to only one or a very few failure modes. This type of component or system frequently shows decreasing reliability with increasing operating age. An age/time limit may be used to reduce the overall failure rate of simple components or systems. Here, safe-life limits, fail-safe designs, or damage tolerance-based residual life calculations may be imposed on a single component or system to play a crucial role in controlling critical failures. Complex components or systems are ones whose functional failure may result from many different failure modes and show little or no decrease in overall reliability with increasing age unless there is a dominant failure mode. Therefore, age limits imposed on complex components or systems have little or no effect on their overall failure rates.

(g) When planning the maintenance of a component or system to protect the safety and operating capability of the equipment, a number of items must be considered in the reliability assessment process:

(1) The consequences of each type of functional failure;

(2) The visibility of a functional failure to the operating crew (evidence that a failure has occurred);

(3) The visibility of reduced resistance to failure (evidence that a failure is imminent);

(4) The age-reliability characteristics of each item;

(5) The economic tradeoff between the cost of scheduled maintenance and the benefits to be derived from it;

(6) A multiple failure, resulting from a sequence of independent failures, may have consequences that would not be caused by any one of the individual failures alone. These consequences are taken into account in the definition of the failure consequences for the first failure; and

(7) A default strategy governs decision making in the absence of full information or agreement. This strategy provides for conservative initial decisions, to be revised on the basis of information derived from operating experience.

(h) A successful reliability-based maintenance program must be dynamic. Any prior-to-service program is based on limited information. As such, the operating organization must be prepared to collect and respond to real data throughout the operating life of the equipment. Management of the

ongoing maintenance program requires an organized information system for surveillance and analysis of the performance of each item under actual operating conditions. This information is needed to determine the refinements and modifications to be made in the initial maintenance program (including the adjustment of task intervals) and to determine the need for product improvement. The information derived from operating experience may be considered to have the following hierarchy of importance in the reliability-based maintenance program:

- (1) Failures that could affect operating safety;
- (2) Failures that have operational consequences;
- (3) The failure modes of units removed as a result of failures;

(4) The general condition of unfailed parts in units that have failed; and

(5) The general condition of serviceable units inspected as samples.

(i) At the time an initial maintenance program is developed, information is usually available to determine the tasks necessary to protect safety and operating capability. However, the information required to determine optimum task intervals and the applicability of age or life limits can be obtained only from age or life exploration after the equipment enters service. With any new equipment there is always the possibility of unanticipated failure modes. The first occurrence of any serious unanticipated failure should immediately set into motion the following improvement cycle:

(1) An inspection task is developed to prevent recurrences while the item is being redesigned;

(2) The operating fleet is modified to incorporate the redesigned part; and

(3) After the modification has proved successful, the special inspection task is eliminated from the maintenance program.

(j) Component improvements based on identification of the actual reliability characteristics of each item through age or life exploration, is part of the normal development cycle of all complex equipment.

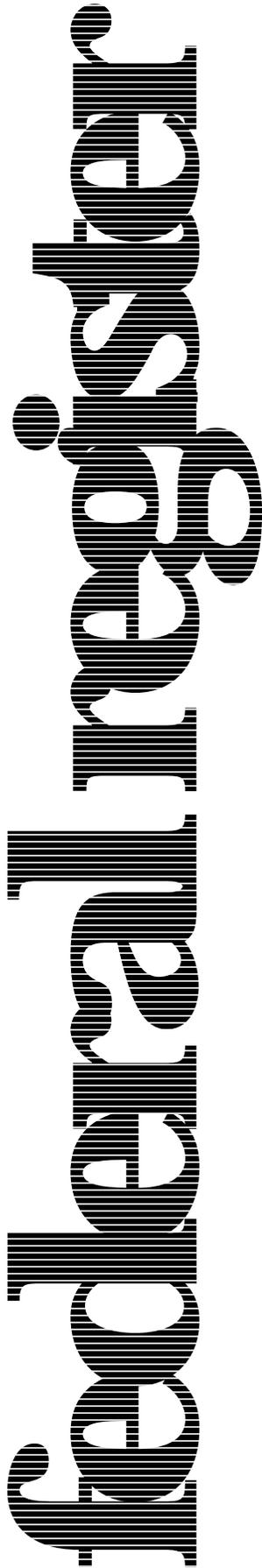
Issued in Washington, D.C., on April 30, 1999.

Jolene M. Molitoris,

Federal Railroad Administrator.

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Wednesday
May 12, 1999

Part III

**Department of the
Interior**

National Park Service

**36 CFR Part 62
National Natural Landmarks Program;
Final Rule**

DEPARTMENT OF THE INTERIOR**National Park Service****36 CFR Part 62**

RIN 1024-AB96

National Natural Landmarks Program

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises the current regulations for the National Natural Landmarks (NNL) Program. These revisions ensure that owners of Potential National Natural Landmarks (PNNL) under consideration for possible national natural landmark designation are notified well in advance of such consideration and have the opportunity to comment on the proposals; that the National Park System Advisory Board reviews all future national natural landmark nominations and provides recommendations to the Secretary of the Interior about their qualifications for designation; and land is not included within an area designated by the Secretary if a private property owner objects to such a designation for his or her portion.

EFFECTIVE DATE: This rule becomes effective on June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Natural Landmarks Program, under Mike Soukup, Associate Director, Natural Resources, Stewardship and Science, National Park Service, 1849 C Street, NW, Washington, DC, 20240-0001. Telephone: 202-208-3884.

SUPPLEMENTARY INFORMATION:**Background**

To identify the full range of geological and ecological features of nationally significant examples of the nation's natural heritage and to encourage their preservation, the Secretary of the Interior established the NNL Program under the authority of the Historic Sites Act of 1935 (16 U.S.C. 461 *et seq.*). Potential natural landmarks are identified in studies by the National Park Service (NPS) and from other sources, evaluated by expert natural scientists, and, if determined nationally significant, designated as landmarks by the Secretary of the Interior. When designated, a landmark is included in the National Registry of Natural Landmarks, which currently lists 587 national natural landmarks nationwide.

The registry includes nationally significant geological and ecological features in 48 States, American Samoa, Guam, Puerto Rico and the Virgin Islands. Of the 587 listed landmarks, half are administered solely by public

agencies; i.e., Federal, State, county or municipal governments. Nearly one-third are owned solely by private parties. The remaining natural landmarks are owned or administered by a mixture of public and private owners. Because many natural landmarks are privately owned or not managed for public access, owner permission must be obtained to visit them. Designation does not infer a right of public access.

National natural landmark designation is not a land withdrawal, does not change the ownership of an area and does not dictate activity. However, Federal agencies should consider impacts to the unique properties of these nationally significant areas in carrying out their responsibilities under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Designation could result in State or local planning or land use implications. The Secretary is required to provide an annual report to the Congress on damaged or threatened NNLs (Section 8 of the National Park System General Authorities Act of 1970 (90 Stat. 1940), as amended (16 U.S.C. 1a-5)).

Natural landmark preservation is made possible by the long-term, voluntary commitments of public and private owners to protect the outstanding values of the areas. In revising the regulations for the program, the NPS seeks to balance two fundamental goals: identification and preservation of nationally significant examples of the nation's natural heritage and the full acknowledgment and respect of owners' interests at all times.

Since 1989, significant interest in the regulations and operation of the NNL Program centered on three major issues: (1) Notification of owners and other concerned individuals and organizations that PNNL were under consideration for national natural landmark designation, (2) owner consent or objection to designation of property as a national natural landmark, and (3) the effects of national natural landmark designation on private property. In response to these concerns, proposed revisions to the program regulations were published by the NPS as a proposed rule in the **Federal Register** on November 21, 1991 (56 FR 58790), for a 90-day comment period. On February 6, 1992 (57 FR 4592), the comment period was extended to March 2, 1992. In addition, during the comment period, the NPS held public hearings on the proposed revised regulations at nine locations around the country. Date, time and exact location of each hearing was announced in the

Federal Register on December 16, 1991 (56 FR 65203).

The revision of the program regulations is part of an improvement of the operation of the NNL Program by the NPS. On November 28, 1989, the Director of the NPS instituted a moratorium on the NNL Program, during which the NPS did not consider new areas for NNL designation. Because the improvements have been completed, the moratorium will be lifted upon the effective date of the regulations.

Summary of Comments

To date, copies of the proposed revised regulations were sent to over 500 individuals or organizations on an NPS NNL mailing list that was made part of the rulemaking. In addition, the proposed regulations were sent to the State Park Directors and State Historic Preservation Officers of all 50 States. As part of NPS's ongoing corroboration and contact with current owners of the 587 designated NNLs, the proposed regulations were also sent to approximately 8,000 NNL owners whose names and addresses were confirmed.

Comments were received from 236 sources, which included government entities, private organizations, and private individuals. In addition, 894 standardized, completed questionnaires were submitted as comments, and 70 respondents presented oral or written comments at the public hearings. Several respondents stated that the proposed revisions of the program regulations would not resolve the three primary issues. However, other respondents expressed support of the objectives of the program or of the proposed revisions. Some respondents recommended the abolishment of the program. Other respondents stated that the proposed revisions were too extreme for resolution of the issues and were therefore detrimental to the objectives of the program.

Analysis of Comments*Issue 1: Comment Procedure*

Comments: Several respondents suggested that the final rule not be issued until the NPS provided owners of all the designated NNLs, as well as owners of PNNL that had been evaluated but not designated, with the opportunity to comment on the proposed rule. Some respondents noted that the proposed rule was so insufficient that the NPS should make the needed changes and issue another proposed rule for comment prior to issuing any final rule. Some respondents suggested that the proposed

rule be reissued for comment and that the preamble should include a reference to the Department of the Interior Inspector General's report on the NNL Program (December 1991).

Service response: To date, the NPS has taken the following steps to advise and inform owners of the 587 existing NNLs about the NNL Program and the rulemaking process. To confirm the names and addresses of the nationwide owners of the 587 designated NNLs, the NPS wrote to approximately 8,000 owners and provided them with a copy of the proposed revised regulations. Almost all of the owners who submitted comments on the proposed regulations supported the continuation of the NNL Program and endorsed the value of the NNL designation.

The NPS believes that NNL owners and other interested organizations and individuals have had sufficient opportunities to participate in the rulemaking. Additionally, all of the comments on the proposed rule were fully considered in developing changes in the final rule. Therefore, the revised rule is being issued as final.

Comments (major rule): Some respondents disagreed with the Department of the Interior's determinations, as stated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, of the rulemaking as a non-major rule within the meaning of Executive Order 12291 (46 FR 13193); with the rulemaking as a categorical exclusion from the procedural requirements of the National Environmental Policy Act under Departmental regulations in 516 DM 6 (49 FR 21438); and with the proposed rule as implying a taking of private property as defined under Executive Order 12630. Some respondents questioned whether an assessment of implied taking of private property by the proposed rule had been completed.

Service response: The NPS completed a takings impact assessment. The Department determined that the proposed rule did not imply taking of private property. Executive Order 12291 was revoked by Executive Order 12866, which is addressed in this final rule.

Comments (legislative authority): Several respondents suggested that the legislative authority for the NNL Program was insufficient or non-existent and that the program should be abolished. Several other respondents noted that the NNL Program served a valuable purpose in recognizing nationally significant natural features and therefore should be retained.

Service Response: The NNL Program is based on direction given to the Secretary of the Interior to identify

objects of national significance contained in Section 1 of the 1935 Historic Sites Act (49 Stat. 666; 16 U.S.C. 461 *et seq.*). In addition, since 1962, the Congress has recognized the NNL Program by including specific references to national natural landmarks in several acts. For example, Section 8 of the National Park System General Authorities Act of 1970, (90 Stat. 1940) as amended (16 U.S.C. 1a-5) directs the Secretary of the Interior to prepare an annual report to the Congress which identifies all landmarks which exhibit known or anticipated damage or threats to the integrity of their resources. Section 9 of the 1976 Mining in the National Parks Act (90 Stat. 1342; 16 U.S.C. 1908) mandates that whenever the Secretary determines that a landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, the Secretary shall notify the person conducting the activity and prepare a report to be submitted to the Advisory Council on Historic Preservation with a request for advice. Finally, the National Parks and Recreation Act of 1978 authorizes appropriations for monitoring the welfare and integrity of landmarks. Thus, the 1935 Act, and subsequent Congressional action provide authority for administering the NNL Program.

Other Issues

The comments received focused on three major areas of the proposed revision of the regulations: (1) Requiring consent of owners for the evaluations and designations of properties, (2) providing owners of designated NNLs with a mechanism for the removal of the designation and (3) determining the effects of NNL designation on private property.

Issue 2: Definitions

Comments (definition of prejudicial procedural error): Some respondents requested that the term "prejudicial procedural error," as a criterion for removal of the NNL designation, be defined in the regulations.

Service response: This term is already defined in § 62.2 and § 62.8(a).

Comments (glossary): One respondent suggested that the regulations include a glossary.

Service Response: Definitions of key terms are already included in § 62.2.

Comments (definition of owner): Several respondents suggested that the definition of owner in § 62.2 include owners of partial interests in land and owners of inholdings and that these owners should receive the same notifications and have the same opportunity to comment and agree with

the proposed NNL designation of a PNNL. One respondent noted that owner should specifically be defined by title search. One respondent noted that the definition of owner should specifically reference Native American owners.

Service Response: The definition of owner in § 62.2 in the final rule was clarified to mean holding fee simple title. A change of the final rule was made to include in this definition Native American beneficial owners of land held in trust by the United States. Other persons or organizations are welcome to comment during the designation a PNNL. Procedures for identifying owners during the second notification stage of the designation process are specified in § 62.4(d)(1).

Comments (definition of national significance): Some respondents questioned the definition of national significance in § 62.2 and the criteria in § 62.5 as too broad and subjective. Some respondents noted that a definition and determination of national significance by natural region as opposed to by nation is inappropriate. One respondent felt that no standards or guidelines were provided to determine national significance.

Service Response: As noted in § 62.5, the natural diversity of the nation is comprised of distinct regional patterns, correlated to broad physiographic patterns. Therefore, the recognition of distinct regional ecological and geological features often found in only one of the country's natural regions, and their comparative assessment primarily to determine a PNNL relative illustrativeness and condition, is the approach used by the NNL Program. No change was made in the final rule.

Comments (other definitions): Some respondents noted that the terms scientist and evaluator had not been defined in the proposed rule.

Service Response: A definition of scientist has been added to § 62.2 in the final rule. Section 62.4(c) has been revised to clarify that evaluators are qualified scientists.

Issue 3: Consent of Owners

Comments (written consent): Several respondents stated that the requirement in § 62.4(d)(4) for written consent from all owners for the designation of an area was unnecessary because designation imposes no regulatory restrictions on owners, was unreasonable because obtaining the required written consent from all owners of most multiple-owner properties would be difficult, and would invalidate or damage the scientific credibility of the program. Some respondents suggested modifying

the requirement for affirmative responses from all owners to two-thirds or the majority of owners. Other respondents felt that an affirmative response was not necessary and that lack of landowner objection was sufficient. One respondent noted that, if landowner consent was required, provisions for protection of designated NNLs must be stronger, such as requiring Federal agencies to avoid or mitigate adverse impacts to NNLs.

Service Response: In response to these concerns, § 62.4(e)(2), (f), and (g)(1) were changed and a new paragraph (d)(5) was added to show that land owned by a private property owner cannot be designated when the private property owner involved has stated, in writing, objection to designation. The NPS believes these changes appropriately achieve the objectives.

Comments (owner consent for evaluation of PNNL): The proposed rule included a provision (§ 62.4(b)(3)) to allow for the use of other information sources by the NPS to evaluate a PNNL without entering onto lands where landowner permission has not been granted. Several respondents stated that a requirement for written landowner consent for designation was not sufficient protection of landowner interests and that the regulations should require written consent, in addition to written notifications of owners, prior to evaluation of the property by the NPS for NNL designation. One respondent noted that, if the NPS elected to complete an evaluation without entering onto lands to which landowners denied access, owners should be notified of the evaluation. One respondent noted that, if the NPS elected to use other information sources for an evaluation without entering lands to which landowners denied access, the information should originally have been obtained with owner consent.

Service Response: The NPS believes that the ability to comparatively evaluate similar or related areas to determine the best examples of certain ecological or geological features is an essential part of the NNL Program. Restricting the ability of the NPS to use existing information sources in completing these evaluations would significantly impair the program. Therefore, this provision was retained in the final rule. Section 62.4(b)(3) of the final rule was changed to show that, when the NPS chooses to complete an evaluation using only existing information, it informs the owners of the decision.

Comments (consent of entire region): Several respondents suggested that the regulations require consent from every

landowner in the entire natural region containing the areas under consideration for designation prior to PNNL evaluations. Some respondents suggested that the consent of owners of properties adjacent to a PNNL also be required for evaluation.

Service Response: These suggestions were not adopted in the final rule. NNL evaluation and designation apply to specific areas, not to adjacent properties or to entire natural regions.

Comments (notification of existing NNL owners): Several respondents suggested that the regulations provide a mechanism to request the removal of NNL designations by property owners. Some respondents suggested the suspension of all 587 existing NNL designations until owners consent. One respondent suggested the retention of only existing NNL designations with which all owners and the appropriate State and local governments concurred. One respondent suggested that no public purpose would be served by allowing owners of NNLs the opportunity to request the removal of designations and that this procedure may lead to the destruction of some NNL's nationally significant values. One respondent suggested the review of NPS records of all NNLs to determine if written owner consent was obtained, whether information about the areas was gathered by entering land without owner permission, and to verify the removal from NPS files and destruction of information about PNNL for which owners did not give consent for designation.

Service Response: Many of the 587 NNLs were designated before 1980, when program regulations were first issued. Furthermore, program funding levels during the decade prior to FY 1992 precluded the comprehensive maintenance of updated documentation of NNL ownership. Therefore, except as indicated below, the NPS will contact the known owners of the existing NNLs in writing. This notice advises owners that they can, within 90 days of this notice, inform in writing the Director of NPS of their wish to have the NNL designations removed from their properties. If owners do not respond within 90 days of the NPS notification, the NNL designations of their properties will be retained. Under these revised regulations, the properties from which the designations are removed may be reconsidered for designation if future changes in ownership or other circumstances warrant such action. These provisions are reflected in a new section, § 62.8(f), which the NPS considers to be an appropriate balance

between the competing points of the described views.

For NNLs with more than 50 owners, the NPS may choose to provide a general notice to owners in one or more newspapers in the area. In addition, in updating its information on names and addresses of owners of NNLs, the NPS has learned that six of the 587 NNLs have a substantially larger and more complex ownership profile than the remaining 581. Given this, the NPS also reserves the right to consider boundary modifications of one or more of the six areas (Mobile-Tensaw River Bottomlands, AL; Anza-Borrego Desert State Park, CA; Ancient River Warren Channel, MN/SD; Nags Head Woods and Jockey Ridge, NC; Canaan Valley, WV; and Baraboo Range, WI) as specified in § 62.7 of the regulations.

Comments (written permission): Some respondents noted that the requirements in § 62.4(a)(1) and (a)(2)(ii) for owner permission for entry onto land should specify that this permission should be in writing.

Service Response: This change has been made in the final rule. Sections 62.4(a)(1), (a)(2)(ii), and (b)(3) were changed in the final rule to clarify that the requirement for landowner permission to enter onto land for PNNL evaluation does not apply to publicly owned lands that are otherwise open to public visitation. Sections 62.6(c)(1) and (c)(2) clarified the situation for monitoring landmarks.

Comment (pending designation following evaluation): Some respondents suggested that the regulations require the NPS to notify owners of PNNL for which an evaluation was completed, and owners of PNNL identified in studies of natural regions but were not designated, and give such owners the right to withdraw from the program.

Service Response: Any future evaluation of PNNL for NNL designation will be done consistent with the program regulations, which include specific requirements for the notification of owners and objections by owners to ensure that owners are fully informed and that private property owners have the option to withdraw their properties from consideration. Therefore, no further change is necessary in the final rule.

Comments (removal of designation): Several respondents recommended a fourth criterion in § 62.8(a) for the removal of future NNL designations: request of the landowner to remove the designation. Other respondents stated their opposition to granting requests for removal of designations by owners. Several respondents suggested an

opportunity for owners to request the removal of the NNL designations of their properties prior to any revision in NNL Program regulations that affect any possible regulatory obligations of the designations on owners. Several respondents suggested that, after ownerships changes, new owners of designated NNLs should be able to request the removal of designations of their properties.

Service Response: Designation of a PNNL by the Secretary as an NNL reflects a determination that the site meets the criteria for national significance and the landowner(s) do not object to the designation. Provisions in the final rule about landowner notification and objection are intended to offer owners full opportunity to participate in the designation process. A program in which an NNL was subject to de-designation whenever an owner so wished or whenever ownership changed would be purely honorific and of little value in achieving the program objectives. Some of these suggestions were therefore not incorporated into the final rule.

Comments (release of information): One respondent noted that information on areas, as described under § 62.9(b), should not be released without private owners' consent. One respondent suggested that § 62.9(b) also include other reasons for restricted dissemination of NNL site information, for example, when an owner does not wish dissemination of information on an area because of concerns over liability or lack of suitable visitor facilities. Some respondents noted that the restriction on dissemination of information for certain ecologically or geologically sensitive areas, as described in § 62.9(b), would be in violation of the Freedom of Information Act. One respondent questioned the need for this provision because of the assumption that owners are voluntarily preserving their NNL property.

Service Response: The NPS considers that § 62.9(b) as proposed represents an appropriate balance between the policy of availability of government information, the need to restrict access to information in certain circumstances, and the requirements of the Freedom of Information Act and related authorities. No change has been made in the final rule.

Issue 3: Effects of NNL Designation

Comments (restrictions on use of property): Several respondents stated that descriptions of the possible effects of NNL designation on property in § 62.3 of the proposed rule were inaccurate and incomplete. Several

respondents stated that the mere consideration of PNNL for NNL designation led to restrictions on the use of property in local, State or Federal regulatory actions; and that, in agreeing to voluntarily help conserve the area, the landowner was giving up interests and rights to the property, which constitutes a restriction on the use of the property.

Service Response: The NPS believes that § 62.3(a) appropriately describes the possible effects of designation. NNL designation does not restrict the use and enjoyment of property by Federal action. The NNL Program provides information on the location and status of important natural features so that they can be considered in regional planning for the use and development of a variety of resources. The NPS encourages owners to protect the nationally significant values of their property, but this voluntary cooperation does not restrict the owner's use of his or her land. The voluntary involvement in the program carries the hope that the owner will not lower the integrity of the resource being recognized. Landmark designation seeks to assist regional development planning and decision making by indicating which resources are relatively significant, and which resources are of lesser importance.

Comments (other regulations/future restrictions): Some respondents suggested that the regulations more specifically describe the possible State and local land use or planning implications of NNL designation on an area referred to in § 62.3(a); some respondents noted that the word restrictions be used in place of implications. Other respondents suggested that the regulations require the NPS to identify and advise owners of Federal, State, or local legal or regulatory restrictions that may apply as a result of NNL designation, including possible future effects of such laws or regulations. Some respondents suggested the revision of § 62.3(a) to state that there will never be any future restrictions on the use of an NNL. Several respondents suggested that the regulations also state that, in addition to possible implications of Federal, State, or local laws and regulations, in some cases non-governmental third parties may use the NNL designation to attempt to influence use or protection of the area. Other respondents suggested that the descriptions in the regulations of effects also clarify the benefits of designation. Other respondents stated that the consideration of areas for NNL designation was a mechanism by the NPS to identify new areas for addition to the National Park System. One

respondent suggested that the regulations also describe the possible effects of designation on owners who own property near or adjacent to the PNNL, such as being required to provide a scenic easement to allow viewing of the landmark.

Service Response: As noted above, designation of a PNNL as an NNL reflects the meeting of criteria for national significance and no landowner objection. One of the objectives of the NNL Program is that owners and Federal, State and local government agencies will take this fact into account when making planning or other future land use decisions. Although this may mean that the decisions may take into account the national significance of the area, the NPS cannot describe or predict the extent to which decisions may be influenced by such designation on lands within or adjacent to areas receiving the NNL designation. Language was added to § 62.3(a) to clarify that, although recognition as an NNL may be used to support certain State or local planning or land use, such State and local actions are not required or mandated by the Department of the Interior as a consequence of the NNL designation. Additional language on the beneficial effects of designation, including possible Federal income-tax benefits from qualified conservation easement donations, was added to § 62.3(b). The title, Implications of Designation, was revised in § 62.3 to "Effects of NNL Designation."

Designation of a PNNL as a national natural landmark is one method used by the Department for recognizing and encouraging the preservation of nationally significant areas as an alternative to Federal acquisition of them for inclusion in the National Park System. Although national natural landmarks have occasionally been subsumed in subsequently created units of the National Park System, and national natural landmarks can be designated in existing national park units, natural landmark designation is not necessarily a first step that ends in adding the area to the National Park System. In considering a possible new addition to the National Park System, the NPS must first determine that an area is nationally significant. While prior designation as an NNL is one indication of national significance, there are several other criteria that must be met before the NPS can support a proposal for a new national park. An area must meet criteria for suitability and feasibility to qualify as a potential addition to the National Park System. To be suitable for inclusion in the System an area must represent a natural

or cultural theme or type of recreational resource that is not already adequately represented in the National Park System or is not comparably represented and protected for public enjoyment by another land-managing entity. To be feasible as a new unit of the National Park System an area's natural landscape and or historic settings must be of sufficient size and appropriate configuration to ensure long-term protection of the resources and to accommodate public use. It must also have potential for efficient administration at a reasonable cost. Other important feasibility factors include land ownership, acquisition costs, access, threats to the resource, and staff or development requirements. Lastly, in all but exceptional circumstances, the Congress must authorize by statute and then appropriate funds for the acquisition of any new unit of the National Park System, or for the significant expansion of existing units.

Comments (effects of designation):

One respondent suggested that, as part of the first notification in § 62.4(b), the NPS specify to the owners what consent to NNL designation entails and that a copy of the potential owner consent agreement be provided to the owner as part of the first notification.

Service Response: Information provided to owners as part of first notification under § 62.4(b)(1) and (2) includes an explanation of the effects of NNL designation, as described in § 62.3. A change was also made in § 62.4(b)(1) and (2) in the final rule to clarify that the information provided at this stage also includes an explanation of the designation process.

Issue 5: Area Information

Comments (obtaining area information): Several respondents suggested that the NPS not retain information on PNNL at any stage in the designation process if owners were not informed of this consideration and had not given their consent to having their property considered for designation. One respondent suggested that § 62.4(a)(2)(ii) be changed to specify that the NPS will not consider information recommending a PNNL for possible NNL consideration, when such information was obtained by entering onto land without landowner permission, regardless of whether such information came from NPS or non-NPS sources. Several respondents suggested that the NPS be required to provide positive proof that all information used in the designation process was legally obtained and that any information when such proof did not exist be destroyed.

Some respondents suggested that the NPS retain all properly acquired information on designated and non-designated areas.

Service Response: The NPS believes that the management and analysis of information on NNL areas, and PNNL under consideration in the NNL process, are important objectives of the NNL Program. This information adds to the comparative national-level resource information base used in identifying and comparing nationally significant resources and also furthers informed planning and environmental review. The NPS is also interested in ensuring that information used in the NNL Program is obtained with the knowledge of the landowner and without entering onto private property without permission of the owners. The NPS believes that the final rule establishes an appropriate balance between these property owner concerns and the information required to achieve program objectives.

Comments (retention of area information): Several respondents suggested that as stated in § 62.4(f) the NPS not retain any information on areas that meet the criteria of national significance but were not designated because of owner objection. Some respondents suggested that the NPS publish the list of PNNL that meet the criteria for national significance but were not designated.

Service Response: A change was made in § 62.4(f) of the final rule to show that the NPS will notify owners and others of the decision to retain information on PNNL that meet the criteria for national significance but were not designated because of owner objection.

Comment (authority for area information retention): One respondent requested that the NPS cite the authority for the statement made in the SUPPLEMENTARY INFORMATION section of the proposed rule that NPS has an affirmative responsibility to maintain information on nationally significant resources and to make this information available for planning and environmental review.

Service Response: General authorities for these actions are described in the legal authorities response above. In addition Section 102(2)(C) of the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321) directs Federal agencies to consider the effects of agency action on the environment. Information on unique resources such as those contained in the NNL Program facilitates such planning and evaluation. Section 9 of the Mining in National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1908) mandates that whenever

the Secretary of the Interior determines that an NNL may be irreparably lost or destroyed by any surface mining activity, the Secretary shall notify the person conducting the activity, submit a report to the Advisory Council on Historic Preservation, and request the Council's advice concerning means to mitigate or abate such activity. This mandate presupposes the collection and retention of information concerning such potentially impacted NNLs. Additionally, Section 8 of the National Park System General Authorities Act of 1970 (90 Stat. 1970), as amended (16 U.S.C. 1a-5), specifically requires the Secretary to investigate, study and continually monitor the welfare of areas whose resources exhibit qualities of national significance.

Comments (area information access): One respondent suggested that the NPS provide reasonable access to all NPS information on PNNL at any point in the designation process, not just during specified notification or comment periods. One respondent suggested that the regulations require the NPS to maintain current information on owners and to maintain complete records of all communications with owners and proof that all notification and consent requirements were met.

Service Response: With this program, the NPS maintains records on PNNL and NNL areas, notifications of and communications with owners, and other program activities. This information is available to the public, subject to requirements of the Freedom of Information Act and other applicable statutes. No change was therefore made in the final rule.

Issue 6: Designation Process—Suggestion

Comments: Several respondents suggested the revision of § 62.4(a)(2) to allow other (non-NPS) entities the ability to make suggestions of only publicly owned areas for NNL consideration. Some respondents suggested that suggestions of privately owned areas for consideration be accepted only from owners of proposed properties and that the appropriate government entity propose publicly owned areas after an open public review of the suggestion. Some respondents suggested only owners who owned all of the property could suggest an area for consideration. Some respondents noted that areas owned by State or local governments could be suggested by private advocacy groups, but only in a public political process. Several respondents suggested that all information used to suggest PNNL for possible NNL consideration should be

accompanied by proof of landowner permission to enter private property.

Service Response: A fundamental aspect of the NNL Program is the open process for suggesting areas for NNL designation by any interested agencies, organizations or individuals. The NPS believes the provisions for landowner notification and objection in the final rule ensure that owners are fully informed of and involved in the consideration of their property in the NNL process and give other interested groups and individuals the opportunity for input into this process without restricting the interests of the owners. Therefore, no change is made in § 62.4(a)(2) of the final rule that restricts the sources of PNNL suggestions.

The NPS believes the requirements for the NPS or its representatives not to enter onto private property without owner permission as stated in these regulations are sufficient to protect owner interests. Additional requirements for the NPS to ascertain the origins of PNNL information in this regard would not be a prudent means to achieve program objectives and would put the NPS in the position of having to determine whether particular conduct constitutes trespass under applicable law. When trespass occurs, property owners may exercise legal remedies under State and local law. Therefore, § 62.4(a)(2)(ii) and (a)(3) were changed in the final rule to eliminate the requirement that the NPS ascertain whether information on PNNL under consideration was acquired by entering onto private property without landowner permission. These changes take into account the ability of property owners to object to designation and the inappropriateness of a government agency ignoring factual resource information simply because of the information's origins.

Comments (source of suggestion): Several respondents suggested that, as part of the first notification stage described in § 62.4(b)(1), the NPS inform the owners of the source of the suggestion of their property for NNL consideration.

Service Response: This change has been made in § 62.4(b)(1) and (2) of the final rule.

Issue 7: Designation Process—Notification

Comment (notification process): One respondent suggested that the regulations specify that first notification of owners be by certified mail.

Service Response: Although the NPS may elect to complete the required notification of owners by certified mail, specification of the type of mail for

notification in the regulations is not necessary. No change is made in the final rule.

Comment (second notification): Some respondents suggested that the information provided to owners and others as part of the second notification under § 62.4(d) should specifically reference the required monitoring and reporting for designated areas as specified in § 62.6.

Service Response: Section 62.4(d) includes a reference to § 62.3. As § 62.3 already includes specific references to § 62.6 and the required monitoring and reporting, no change was necessary in the final rule.

Comments (areas with 50 or more owners): Some respondents noted that the requirement in § 62.4(b)(2) for individual notifications of owners for areas with 50 or more owners, in addition to a public notice and possible public meeting, was excessive and that this would add unnecessarily to the cost and time of the designation process. One respondent misinterpreted § 62.4(b)(2) to mean that the NPS would not be providing written notifications to owners of areas with less than 50 owners.

Service Response: First notification requirements for areas with less than 50 owners are specified in § 62.4(b)(1). A change was made in § 62.4(b)(2) of the final rule. The NPS publishes a general notice in one or more local newspapers. Written notice to all owners of areas with more than 50 owners is not provided.

Comment (response time): One respondent suggested that a time period be specified for receiving responses from owners after first notification.

Service Response: As specified in § 62.4(b)(3), the NPS or its representative does not enter onto private property to evaluate a PNNL without receiving permission from the owner(s) of that property. No time limit is being set for receiving this landowner permission. No change is made in the final rule.

Comments (comment period following second notification): Some respondents noted that the extension of the comment period from 60 to 120 days after the second notification, as specified in § 62.4(d)(3) and (4), was excessive.

Service Response: In response to these comments, § 62.4(d)(4) and (5) were changed in the final rule to specify a 60-day comment period. In addition, the comment period relating to designation removal also was changed to 60 days in § 62.8(c). In both cases, 60 days are considered an adequate period that may be extended when warranted.

Comments (notification of local government): One respondent suggested that the first notification specified in § 62.4(b) be given to the appropriate local government agency and to owners. Some respondents suggested that the NPS hold a local public meeting or hearing on every PNNL being considered for NNL designation.

Service Response: As part of the first notification process, notice is provided to owners, as specified in § 62.4(b)(1) and (2), informing them that the NPS is considering their properties for designation and requesting owner permission to conduct an on-site evaluation. After the evaluation, when the NPS determines that an area seems to meet the criteria for national significance, written notice of the proposal is provided under § 62.4(d)(3)(i) to the local government executive at the second notification stage. Section 62.4(d)(2) was changed in the final rule to provide as part of the second notification an opportunity for the NPS to hold a public information meeting for areas with 50 or more owners if public interest warrants or it is requested by the local governmental jurisdiction. This provision was therefore deleted from first notification in § 62.4(b)(2).

Comment (notification of Native Americans): One respondent suggested that the requirements for notification of local, State, and Federal government officials and other interested parties provided under § 62.4(d)(3), § 62.4(j), § 62.7(b) and § 62.8(e) specifically include Native American tribal governments and communities and native villages and corporations.

Service Response: This change has been made in the final rule.

Comments (notification mailing list): One respondent suggested that the regulations include a provision that allows interested individuals and organizations to request placement on a general NPS notification mailing list to be notified of pending evaluations under § 62.4(d)(3)(vi) and of other public comment periods. This respondent also suggested that the list of individuals and organizations be available for public review. One respondent suggested that the regulations require the NPS to notify all organizations interested in protecting private property rights of all future evaluations.

Service Response: Any individual or organization may request placement on a mailing list to receive future notifications or other program documents about consideration of areas for NNL designation or of other program actions and NPS will respond if needed.

Issue 8: Designation Process—Area Evaluation

Comments (evaluation report): One respondent suggested that the evaluation report, as described in § 62.4(c)(1), include a proposed boundary for the site. One respondent suggested that first, second, and third notifications provided to owners under § 62.4(b), (d) and (j) include a full description of the area, including the size and a detailed map of the area. One respondent suggested that the draft evaluation report be distributed to all owners for comment within a specified time period or the evaluation becomes null and void and must be re-done in the future.

Service Response: Section 62.4(c)(1) was changed in the final rule to specifically include a proposed boundary map as part of the evaluation report. § 62.4(d)(1) and (2) were changed in the final rule to specify that, as part of the second notification process, owners are provided a copy of the area evaluation report.

Comments (peer review): Some respondents expressed support for the requirement in § 62.4(c)(2) for three peer reviews of completed evaluation reports. One respondent suggested that this provision be deleted, stating that outside peer reviewers should have no role in the NNL designation process.

Service Response: The NPS believes peer reviews can substantially add to the objectivity of the consideration process; therefore, this provision is retained in the final rule. One respondent suggested that the regulations should state that peer reviewers must be qualified scientists and not just preferably be scientists. This change has been made in § 62.4(c)(2) of the final rule.

Issue 9: Designation Process—Advisory Board

Comments (Advisory Board role and composition): Some respondents suggested that the National Park System Advisory Board not be involved in the consideration and recommendation of PNNL for NNL designation, as required under § 62.4(g)(1), unless the board consists of individuals with appropriate scientific backgrounds who are qualified to make such recommendations. Some respondents noted that the designation process, as described particularly in § 62.4(g) and (h), included too many review levels, including the Director, Assistant Secretary, Advisory Board and Secretary, to be effective.

Service Response: As noted in the proposed rule, section 1211 of Public Law 101-628 (16 U.S.C. 463) requires

the National Park System Advisory Board to provide recommendations to the Secretary on NNL designations. This law also indicates the composition of the board include members who are competent in biology or geology. No change was made in the final rule about the role of the Advisory Board. Sections 62.4(g), (h), and (i), and 62.7(d) were changed in the final rule to eliminate the requirement for the Director to provide NNL materials through the Assistant Secretary.

Comment (procedural requirements): One respondent suggested that the Advisory Board, in addition to reviewing whether PNNL qualified for NNL designation, also review whether procedural requirements had been met.

Service Response: Section 62.4(g)(1) specifies that the Director submits to the Advisory Board only areas that meet the criteria for national significance and for areas where all procedural requirements were met. Therefore, no change was needed in the final rule.

Comment (Advisory Board meetings): One respondent suggested the notice of Advisory Board meetings, specified in § 62.4(g)(2), in addition to being published in the **Federal Register**, be mailed to the owners of PNNL that will be considered at these meetings in addition to being published in the **Federal Register**.

Service Response: This change has been made in the final rule.

Issue 10: Designation Process—Recommendation to Advisory Board

Comments (national significance): One respondent suggested a standard of impracticality due to a large number of owners be added to § 62.5 in addition to the standard of impracticality due to physical size of the feature. One respondent suggested that the national significance criteria include objective standards for area boundaries.

Service Response: Considerations about area ownership are distinct from the criteria for determining national significance; ownership considerations are in § 62.4. Area boundaries are discussed in § 62.4(c)(1).

Issue 11: Designation Process—Other Environmental Regulations

Comment (environmental and economic impact statements): One respondent suggested that the NPS should be required to complete an environmental impact statement and an economic impact statement for each area considered for NNL designation.

Service Response: The development of standards for the identification, nomination, or designation of national natural landmarks or national historic

landmarks is categorically excluded from the National Environmental Policy Act process under the implementation guidelines developed by the NPS under the Act. Additionally, an economic impact statement is not required for activities related to listing. No change was made in the final rule.

Comments (mining): Some respondents suggested that the possible implications of the Mining in National Parks Act, as described in § 62.6(e), be more fully explained in the regulations. Some respondents noted that the definition of surface mining under this act was not clear. One respondent questioned whether the definition of surface mining may include owner-authorized scientific, archeological or paleontological excavations at the area. Some respondents noted that what types of actions the Federal government could take to mitigate or abate surface mining that may cause irreparable loss or destruction of an NNL were unclear. Some respondents noted that actions to mitigate or abate surface mining may constitute a taking of private property and that this would be a contradiction of § 62.3(b).

Service Response: The Mining in the National Park System Act (16 U.S.C. 1908) applies to mining and mineral extraction activities, not to paleontological or archeological excavations. The act does not directly authorize the Secretary or the Advisory Council on Historic Preservation to take any action to mitigate or abate surface mining activities that are found to be damaging national historic or natural landmarks. No change was made in the final rule.

Comment (NEPA): One respondent suggested that § 62.6(f), which provides for Federal agencies to consider NNL existence and location as part of their compliance with NEPA, be deleted.

Service Response: Federal agencies are required under NEPA to assess the effects of their actions on the environment which include potential impacts to exceptional natural areas like national natural landmarks. No change was made in the final rule.

Issue 12: Designation Process—Designation

Comments (county records): Some respondents suggested that existence of the designation be recorded as part of the county lands records; other respondents suggested that the designation should be recorded on the deed.

Service Response: Because the NPS has no regulatory authority over owners regarding the NNL designation, the NPS cannot mandate that the NNL

designation be recorded with property deeds or other lands records; neither is there anything in these regulations to prevent interested owners from recording the fact of the designation in such a fashion. Therefore, no change was made in the final rule.

Comment (acceptance of designation implies contractual arrangement): One respondent suggested that by accepting a certificate or plaque from the NPS recognizing the NNL designation, as specified in § 62.4(k)(1), the landowner enters into a contractual arrangement with the NPS that would somehow obligate the landowner to protect the NNL.

Service Response: As suggested above, no contractual or otherwise binding obligation is involved in a landowner's voluntary consent to having his or her properties considered for NNL designation. Neither is there any legal obligation on the part of the landowners to protect NNL after having accepted a certificate or plaque. A change was made in § 62.4(k)(1) of the final rule to clarify this point.

Issue 13: Monitoring

Comment (periodic contacts): One respondent suggested that the regulations clarify the meaning of NPS making periodic contacts with NNL owners by defining the frequency and nature of these contacts.

Service Response: NPS contacts with owners are generally informal letters or telephone calls to exchange information about the NNL, provide technical assistance, update ownership name and address information, and so on. The NPS also conducts periodic visits to an NNL, with the permission of owner(s), for example, to inspect site condition or meet with owner(s) in person. The exact frequencies of the contacts cannot be specified because they depend on circumstances and events. No change was made in the final rule.

Comment (protection guidelines): One respondent suggested that the NPS be required to give owners guidelines or recommendations for protecting NNLs.

Service Response: As suggested above, the NPS does not dictate or direct landowner actions with regard to use or conservation of an NNL. In some cases, the NPS may be able to provide technical advice about the NNL resources and their conservation. This is done at the request of the landowner and is subject to availability of necessary expertise by NPS.

Comment (permission for monitoring visits): Some respondents suggested that § 62.6(c)(2) specify that written permission of owners is required before

the NPS or its representatives enter onto land for monitoring NNL condition.

Service Response: The NPS does not believe that development of a formal written landowner permission process is necessary for monitoring visits. Non-written permission (e.g., via telephone) is obtained for each visit. Section 62.6(c)(2) has been changed in the final rule to specify that landowner permission is not required for monitoring visits of public lands that are otherwise open to the public.

Comment (participation in monitoring visits): One respondent suggested that owners should be allowed to participate in any NNL monitoring visits and contribute information to the monitoring report.

Service Response: The NPS encourages owners to accompany the individual making the monitoring visit. Contributions of information by owners to the monitoring report are also welcomed and encouraged.

Comments (monitoring report): One respondent suggested that owners be notified of who completed monitoring reports of their properties and be given copies of the reports. One respondent suggested that the NPS give copies of the entire final Section 8 report, not only pertinent portions of the report, to owners and to other parties who requested them.

Service Response: The respective changes were made in § 62.6(c)(2) and (d)(2). In addition, as suggested in § 62.6(d)(1), owners of NNLs listed as damaged or threatened in the draft Section 8 Report are provided opportunities to review and comment on the draft report.

Comments (comment period): Some respondents suggested that § 62.6(d)(1) be revised to allow a 60-day or 90-day comment period, instead of a 30-day comment period, on the draft Section 8 report each year.

Service Response: Because this report is prepared annually, a 60-day or 90-day review of the draft report is impractical. No change was made in the final rule.

Comment (transmitting comments to Congress): One respondent suggested the Secretary transmit to the Congress any comments by owners on the Section 8 report.

Service Response: The Secretary is required, under the National Park System General Authorities Act (90 Stat. 1940) as amended (16 U.S.C. 1a-5), to transmit this report to the Congress. Transmission of the landowners' comments on the report is not required. Individuals or organizations are, of course, free to submit any materials on this or any other issue to the Congress. No change was made in the final rule.

Comments (effect of monitoring report): One respondent suggested the regulations clarify that a probable consequence of having an NNL listed in the Section 8 report is condemnation of private land for government acquisition. One respondent suggested that the regulations explain that, as part of the Section 8 report, the Secretary is also required to recommend NNLs listed in this report for study for addition to the National Park System.

Service Response: Condemnation of private land for government acquisition is not a probable consequence of listing an NNL in the Section 8 report. The fact that the Secretary is required by 16 U.S.C. 1a-5 to provide a report of damaged or threatened NNLs to the Congress and to recommend qualified NNLs for consideration for possible addition to the National Park System does not require subsequent action by the Congress or the Department. A change has been made in § 62.6(b) of the final rule to clarify this point.

Comments (third parties): Several respondents suggested that the regulations eliminate or restrict the involvement of third party organizations or individuals (non-landowner, non-governmental) in the designation and monitoring process. Other respondents suggested that the NPS must ensure the objectivity of these processes and develop procedures to avoid possible conflicts of interest where third parties are suggesting PNNL for consideration, completing or reviewing site evaluations, or monitoring the conditions of designated NNLs. Several respondents suggested the NPS not be allowed to enter into any agreements or contracts with any other agencies, organizations, groups or individuals as specified in § 62.9(a), except when these agencies, groups or individuals are consenting NNL owners. Other respondents suggested that the reference in § 62.6(b) to the use of outside individuals, agencies or organizations to monitor the status of selected NNLs be deleted. One respondent suggested that the regulations prohibit owners from developing or having any substantive contributions of information to the evaluations of their properties for NNL designation because of conflict of interest.

Service Response: In administering the NNL Program, the NPS ensures that any agreements or arrangements with non-NPS organizations or individuals do not have possible conflict of interest implications. Owner consent to such administrative actions is not appropriate, nor would it be appropriate to exclude owners from the designation

process. No change is made in the final rule.

Issue 14: Boundary Adjustments

Comment (boundary modifications):

One respondent suggested that the provision in § 62.7(a) for modifying NNL boundaries allows the NPS to take over private land and should therefore be deleted.

Service Response: The NPS does not "take over" private land by landmark designation. As noted above, the NNL Program provides information on the location and status of important natural features. The voluntary cooperation of private property owners does not restrict the owner's use of his or her land. No change is made in the final rule based on this comment.

Comment (modification of nationally-significant values): One respondent questioned the need for a provision, as described in § 62.7(a), to allow for modifications in the description of an NNL's nationally significant values if scientists had correctly identified all nationally significant values during the original designation process.

Service Response: This section is retained in the final rule because new information may be discovered or conditions of an NNL may change.

Comment (procedure reference): One respondent suggested that § 62.7(b) be revised to reference § 62.4(b) through § 62.4(j) when referring to the expansion of the boundaries of an NNL.

Service Response: This change was made in the final rule.

Comments (minor boundary adjustments): Some respondents suggested that what constituted a minor boundary correction under § 62.8(e) was unclear. One respondent suggested that minor be defined to mean that boundary corrections involve only properties owned by existing, willing NNL owners. Another respondent suggested that § 62.7(e) specify that such minor technical corrections only can be made with owner consent. One respondent suggested that the NPS should notify owners of any minor technical boundary corrections under § 62.7(e).

Service Response: Section 62.7(e) was changed in the final rule to include a provision for notifying owners in advance of any proposed minor technical boundary corrections or other administrative changes in documentation. Dependent on owner response to this notification, the NPS will determine whether the proposed changes constitute such minor technical corrections or whether the procedures outlined under § 62.4(d) through (j) should be followed. In addition, § 62.7(e) was changed in the final rule to define a minor boundary correction

as one that represents a change in less than five percent of the original total land area of the NNL.

Comment (boundary delineation): One respondent suggested the addition of a section to the regulations to provide for completion of previously incomplete delineations of boundaries of NNLs.

Service Response: Section 62.7 provides for adjustment of NNL boundaries, including completion of previously incomplete boundary delineations. No change was therefore needed in the final rule.

Issue 15: Removal of Designation

Comment (peer review): One respondent suggested that, when the removal of an NNL designation is considered under § 62.8(b), one of the three peer reviewers of any evaluation removal process be from the NPS to eliminate bias.

Service Response: When possible, the NPS uses non-NPS evaluators and peer reviewers to obtain objective, scientific advice for particular areas and types of resources. In general, NPS representatives do not serve as peer reviewers. The NPS reviews all information available, as described in § 62.8(b), before determining that an area no longer seems to merit designation as an NNL.

Comments (area information retention): Some respondents suggested that information on areas from which NNL designations were removed under § 62.8 not be retained by the NPS.

Service Response: The NPS maintains information as required under Federal records management regulations. Information on areas from which the designations were removed is also maintained to provide a documented record of the actions, decisions, notifications and other pertinent information for the NNL Program. No change was made in the final rule.

Issue 16: Miscellaneous Comments

Comment (American Indians): One respondent suggested that the types of agencies and organizations with which NPS may enter into agreements, as described in § 62.9(a), specifically include Native American tribal governments and native villages, corporations and communities.

Service Response: This change was made in the final rule.

Comments (area information dissemination): One respondent suggested that the dissemination of information on NNLs associated with Native American religious or other traditional uses may reveal such sensitive information. One respondent suggested that, although it was acceptable for the NPS to limit

information dissemination on ecologically or geologically fragile NNLs, the NPS also make a greater effort to disseminate educational information on other NNLs and on the NNL Program.

Service Response: The NPS considers that its general programs and policies about education, protection of sensitive information and culturally significant properties are sufficient. Therefore, no change was made in the final rule.

Comment (procedures handbook): One respondent suggested that the NPS make the program procedures handbook, described in the SUPPLEMENTARY INFORMATION section to the proposed rule, available for public comment.

Service Response: The program handbook is an internal NPS administrative manual for which public comment is not required. Copies of the completed handbook will be available to the interested public on request. No change was made in the final rule.

Comment (program documents): One respondent suggested that the NPS be required to maintain and publish an updated list of all NNL Program procedural documents.

Service Response: The already mentioned program handbook will reference and describe other program procedural documents. No change was made in the final rule.

Comments (lawsuits/penalties): Some respondents suggested that the regulations include provisions for civil lawsuits to recover costs, damages and attorney fees if their properties had been evaluated or designated without their consents. Several respondents suggested that the regulations provide for penalties for NPS employees who violate the regulations or otherwise violate landowner rights.

Service Response: The NPS does not believe these measures are necessary, or within its legal authority, and therefore no change was made in the final rule.

Other minor editorial changes were made in the final rule. These changes were to improve readability or clarity.

Drafting information

Authors participating in this rulemaking came from the National Park Service, the Office of the Assistant Secretary for Fish and Wildlife and Parks and the Office of the Solicitor.

Paperwork Reduction Act

This rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The notification letter which NPS sends

to landowners requesting their views about NNL designation is specifically exempted from Paperwork Reduction considerations according to Departmental guidelines (381 DM Chapter 2, Appendix 1) under A certifications, consents or acknowledgments. The status form used by NPS to monitor condition of designated NNLs for the annual Section 8 report is primarily filled out by NPS personnel. In some cases, it is completed by NNL patrons, i.e. scientists and others who volunteer to monitor the condition of selected NNLs on behalf of NPS. In other cases, it is filled out by area managers of other Federal or State agencies who own NNLs. It is NPS opinion that completion of the form is not solicited from private individual owners of NNLs and therefore not applicable under the Paperwork Reduction Act.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or require the preparation of a regulatory analysis. The effect of the revisions made herein ensures that owners, including but not limited to local governments, small businesses, and other small organizations, are fully notified in advance and have the opportunity to comment on the proposed National natural landmark designation and that property is not included in a designation where an owner objects to designation. The total estimated economic effects of this rule on small entities are therefore negligible.

The revisions ensure that all owners are fully notified in advance of the agency's consideration of their properties as potential national natural landmarks, that private properties are not entered for purposes of evaluation without owner permission, and that property is not designated where private property owners have indicated their objection to the designation in a manner specified.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of \$100 million or more in any given year on local, state or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards

provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants. Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

The Department of the Interior has reviewed this rule as directed by Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*, to determine whether this rule includes policies that imply the taking of private properties. The Department determined that this rule does not imply the taking of private properties because it does not deny economically viable use of any distinct, legally protected property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion or deprivation. National natural landmark designation does not change ownership of property and does not dictate use of designated property. The effects of the revisions are the strengthening and clarification of notification of owners that properties are being considered, the explicit preclusion of entry onto private property for purposes of program area evaluation without owner permission, and the preclusion of designations of areas where the majority of the private property owners indicated their objection as specified.

List of Subjects in 36 CFR Part 62

Natural resources.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

1. 36 CFR Part 62 is revised to read as follows:

PART 62—NATIONAL NATURAL LANDMARKS PROGRAM

Sec.

62.1 Purpose.

62.2 Definitions.

62.3 Effects of designation.

62.4 Natural landmark designation and recognition process.

62.5 Natural landmark criteria.

62.6 Natural landmark monitoring.

62.7 Natural landmark modifications.

62.8 Natural landmark designation removal.

62.9 General provisions.

Authority: 16 U.S.C. 1a–5, 461 *et seq.*, 463, 1908.

§ 62.1 Purpose

The procedures in this part set forth the processes and criteria for the identification, evaluation, designation and monitoring of national natural landmarks.

(a) The National Natural Landmarks Program focuses attention on areas of exceptional natural value to the nation as a whole rather than to one particular State or locality. The program recognizes areas preserved by Federal, State and local agencies as well as private organizations and individuals and encourages the owners of national natural landmarks to voluntarily observe preservation precepts.

(b) The National Natural Landmarks Program identifies and preserves natural areas that best illustrate the biological and geological character of the United States, enhances the scientific and educational values of preserved areas, strengthens public appreciation of natural history, and fosters a greater concern for the conservation of the nation's natural heritage.

§ 62.2 Definitions.

The following definitions apply to this part:

National Natural Landmark is an area designated by the Secretary of the Interior as being of national significance to the United States because it is an outstanding example(s) of major biological and geological features found within the boundaries of the United States or its Territories or on the Outer Continental Shelf.

National Registry of Natural Landmarks is the official listing of all designated national natural landmarks.

National significance describes an area that is one of the best examples of a biological community or geological feature within a natural region of the United States, including terrestrial communities, landforms, geological features and processes, habitats of native plant and animal species, or fossil evidence of the development of life.

Natural region is a distinct physiographic province having similar geologic history, structures, and landforms. The basic physiographic characteristics of a natural region influence its vegetation, climate, soils, and animal life. Examples include the Atlantic Coastal Plain, Great Basin, and Brooks Range natural regions.

Owner means the individual(s), corporation(s), or partnership(s) holding fee simple title to property, or the head of the public agency or subordinate employee of the public agency to whom such authority was delegated and who is responsible for administering publicly owned land. Owner does not include individuals, partnerships, corporations, or public agencies holding easements or less than fee interests (including leaseholds) of any form. A Native American tribe that is the beneficial fee simple owner of lands, with the United States as trustee, will be considered as owner of private property for the purposes of this part. Similarly, individual member(s) of a Native American tribe who are beneficial owner(s) of property, allottee(s) held in trust by the United States, will be considered as owner(s) of private property for the purposes of this part.

Potential national natural landmark means an area that, based on recommendation or initial comparison with other areas in the same natural region, seems to merit further study of its merits for possible national natural landmark designation.

Prejudicial procedural error is one that reasonably may be considered to have affected the outcome of the designation process.

Representative refers to any public or private individual, agency, or organization that is performing actions related to the identification, evaluation, designation or monitoring of national natural landmarks on behalf of or in cooperation with the National Park Service (NPS), either under a contractual agreement or as a volunteer.

Scientist refers to an individual whose combination of academic training and professional field experience in the natural region qualifies him/her to identify and comparatively evaluate natural areas at the regional or national level.

§ 62.3 Effects of designation.

(a) Designation of an area by the Secretary as a national natural landmark is not a land withdrawal, does not change the ownership of an area, and does not dictate activity. However, Federal agencies consider the unique properties of designated national natural landmarks and of areas that meet the

criteria for national significance in their planning and impact analysis (see § 62.6(f)), and there may be State or local planning or land use implications. Designation as a national natural landmark does not require or mandate under Federal law any further State or local planning, zoning or other land-use action or decision. Owners who agree to have their lands designated as a national natural landmark do not give up under Federal law any legal rights and privileges of ownership or use of the area. The Department does not gain any property interests in these lands.

(b) Benefits of national natural landmark designation include the positive recognition and appreciation of nationally significant resources and the ability of public agencies and private individuals and organizations to make more informed development and planning decisions early in regional planning processes. In addition, some private owners of commercially operated national natural landmarks that are open to public visitation may choose to recognize and emphasize the national significance of the areas by providing descriptive information to the public. Under section 170(h) of the United States Internal Revenue Code, some owners of national natural landmarks may be eligible to claim a charitable contribution deduction on their Federal income tax for qualified interests in their natural landmark property donated for a qualified conservation purpose to a qualified conservation organization.

(c) The Secretary will provide an annual report to the Congress on damaged or threatened designated national natural landmarks (see § 62.6(b)). The Secretary will also report to the Advisory Council on Historic Preservation any designated national natural landmarks that may be irreparably lost or destroyed by surface mining activity (see § 62.6(e)).

§ 62.4 Natural landmark designation and recognition process.

(a) *Identification.* Potential national natural landmarks are identified in the following manner.

(1) *Natural region studies.* The NPS conducts inventories of the characteristic biological and geological features in each natural region to provide a scientific basis for identifying potential national natural landmarks. The NPS is responsible for the completion of these studies, which are generally done by qualified scientists under contract. A study provides a classification and description of biological and geological features in that natural region and an annotated list of

areas that illustrate those features. During a study, the NPS or any representative of the NPS may enter onto land only after receiving written permission from the owner(s) of that land, except when the land is publicly owned land and otherwise open to the public.

(2) *Other entities.* (i) Any public or private entity may suggest an area for study and possible national natural landmark designation. The entities include:

(A) Federal agency programs that conduct inventories in order to identify areas of special interest, for example, essential wildlife habitat, research natural areas, and areas of critical environmental concern; and

(B) State natural area programs that systematically and comprehensively classify, identify, locate and assess the protective status of the biological and geological features located in a State.

(ii) If an individual, agency or organization that suggests an area for national natural landmark consideration is not the owner of the area, written permission of the owner(s) is required to enter onto the PNNL to gather information, except when the land is publicly owned and otherwise open to the public.

(3) After receiving the suggestions from a natural region study and suggestions from other sources, the NPS determines which PNNL merit further study for possible national natural landmark designation. This determination is based on comparison with existing national natural landmarks in the natural region, the national natural landmark criteria (see § 62.5) and other information.

(b) *First Notification.* (1) Before a potential national natural landmark is evaluated by scientists as described in paragraph (c) of this section, the NPS notifies the owner(s) in writing, except as specified in paragraph (b)(2) of this section.

(i) This notice advises the owner(s) that the PNNL is being considered for study for possible national natural landmark designation and provides information on the National Natural Landmarks Program, including an explanation of the effects of national natural landmark designation as described in § 62.3.

(ii) The notice also provides the owner with available information on the area and its tentatively identified significance, solicits the owner's comments on the area, including any information on current or anticipated land use or activities that may affect the area's natural values, integrity, or other matters of concern, and informs the

owner of the source of the suggestion for consideration.

(iii) The notice also requests owner permission to enter the property, unless the area is otherwise open to the public, so the NPS or its representative can conduct an on-site evaluation of the PNNL as described under paragraph (c) of this section, and advises the owner of the procedures the NPS will follow in considering the PNNL for possible designation.

(2) Before a potential national natural landmark having 50 or more owners is evaluated by scientists as described in paragraph (c) of this section, the NPS provides general notice to property owners. This general notice is published in one or more local newspapers of general circulation in the area in which the potential national natural landmark is located. The notice provides the same information listed under paragraph (b)(1) of this section.

(3) During an on-site evaluation as described in paragraph (c) of this section, the NPS or any representative of the NPS will not enter onto land without permission from the owner(s), except when the land is publicly owned and otherwise open to the public. The NPS may complete evaluations of PNNL by using other information, including information that was previously gathered by other Federal or State agencies or gained from other scientific studies. The NPS notifies owners if areas are evaluated from existing information not requiring land entry.

(4) The described procedures for providing written notification to owners and receiving responses from owners about the first notification are the responsibility of the NPS and cannot be delegated to any representative of the NPS.

(c) *Evaluation.* (1) The NPS uses the national natural landmark criteria in § 62.5 to evaluate the potential natural landmark. Potential national natural landmarks are evaluated on a natural region basis; i.e., similar areas that represent a particular type of feature located in the same natural region are compared to identify examples that are most illustrative and have the most intact, undisturbed integrity.

(2) Evaluations are done by qualified scientists who are familiar with the natural region and its types of biological and geological features. Evaluators make a detailed description of the area, including a proposed boundary map, and assess its regional standing using the national natural landmark criteria (see § 62.5) and any additional information provided by the NPS. Evaluation reports must have been completed or updated within the

previous 2 years in order to be considered by the NPS.

(3) Completed evaluation reports are reviewed by no fewer than three peer reviewers, who are scientists familiar with the biological or geological features of the area or natural region. These reviewers provide the NPS with information on the scientific merit and strength of supportive documentation in the evaluation report. On the basis of evaluation report(s) and the findings of the peer reviewers, the NPS makes a determination that:

(i) The PNNL does or does not appear to qualify for national natural landmark designation; or

(ii) Additional information is required before a decision can be made about the status of the PNNL.

(4) When a PNNL does not seem to qualify for national natural landmark designation, the NPS notifies the owner(s) as prescribed in paragraphs (b)(1) and (2) of this section.

(d) *Second Notification.* (1) When the Director determines that an area meets the criteria for national significance, the NPS notifies the owner(s) in writing, except as specified in paragraph (d)(2) of this section.

(i) The notice references the rules in this part, advises the owners of the procedures the NPS follows and of the effects of national natural landmark designation as described in § 62.3, provides the owner(s) with a copy of the evaluation report, and provides the owner(s) with the opportunity to comment. The list of owners must be obtained from official land or tax records, whichever is most appropriate, within 90 days before issuing the second notification.

(ii) If in any State the land or tax records are not helpful, the NPS can seek alternative sources to identify the owners.

(iii) The NPS is responsible for notifying only owners whose names appear on the list.

(2) If an area has more than 50 owners, the NPS provides a general notice to the property owners. NPS will publish a general notice in one or more local newspapers of general circulation in the region in which the area is located. A copy of the evaluation report is made available on request. In addition, the NPS may conduct a public information meeting, if widespread local public interest warrants it or if requested by the executive of the local governmental jurisdiction in which the area is located.

(3) In addition, NPS notifies appropriate authorities, organizations and individuals. The notices reference these rules and advise the recipient of

the proposed action, of the procedures the NPS follows, and of the effects of national natural landmark designation as described in § 62.3. Notice of the proposed action is published also in the **Federal Register**. NPS will notify:

(i) The executive of the local governmental jurisdiction in which the area (PNNL) is located;

(ii) The governor of the State;

(iii) Other appropriate State officials;

(iv) Senators and members of Congress who represent the district in which the area is located;

(v) Native American tribal governments and native villages and corporations in the region; and

(vi) Other interested authorities, organizations and individuals as deemed appropriate.

(4) All notified entities, including non-owners, have 60 days to provide comments before NPS decides whether the area meets the criteria for national significance. To assist in the evaluation of a area, comments should, among other factors, discuss the area's features and integrity. Information is also welcome on current or anticipated land use or threats that could effect the area. Any party may request a reasonable extension of the comment period when additional time is required to study and comment on a landmark proposal. The Director may grant these requests if he or she determines they are in the public interest. All comments received are considered in the national natural landmark designation process.

(5) Upon individual or general notification, any owner of private property within a PNNL who wishes to object to national natural landmark designation must submit a notarized statement to the Director to certify that he or she is the sole or partial owner of record and he or she objects to the designation. These statements will be submitted during the 60-day comment period. Upon receipt of objections to the designation of a PNNL consisting of multiple parcels of land, the NPS must determine how much of it consists of owners who object to designation. If an owner whose name is not on the ownership list developed by the NPS certifies in a notarized statement that he or she is the sole or partial owner of the area, NPS will take into account his or her views about designation. In circumstances where a single parcel of land within a PNNL has more than one fee simple owner, an objection to designation of that property must be submitted by a majority of the owners.

(6) All described procedures for the notification of owners and receiving responses from owners in the second notification process are the

responsibility of the NPS and cannot be delegated to any representative of the NPS.

(e) *Significance determination.* (1) NPS will review all documentation including, but not limited to, evaluation reports, peer reviews, and received comments. If NPS determines that a PNNL does not meet the criteria for national significance (see § 62.5), the NPS will notify the owner(s) in writing that their land is no longer under consideration for national natural landmark designation. If PNNL are owned by 50 or more parties, the NPS will publish a general notice as described in paragraph (d)(2) of this section. In addition, the NPS will notify in writing officials, individuals and organizations notified under paragraph (d)(3) of this section.

(2) When the NPS determines that a PNNL meets the criteria for national significance, the NPS determines whether any private property owners submitted valid written objection to designation.

(f) *Areas meeting criteria.* When the Director of NPS determines by all available information that a PNNL meets the criteria for national significance, but some private property owners submitted written objections to the proposed national natural landmark designation, the NPS maintains all this information about the area and which shall be available as part of the environmental analysis for any major federal action for purposes of NEPA which impacts the NNL or these other lands. Notice of this action is provided by the NPS to the owners as specified in paragraphs (d)(1) and (2) of this section and to officials, individuals and organizations notified under paragraph (d)(3) of this section. If some but not all of the property owners within a PNNL object to designation, the NPS will exclude the objecting properties and proceed with the process only if enough area remains of non-objecting properties to allow sufficient representation of the significant natural features.

(g) *National Park System Advisory Board.* (1) The Director of the NPS reviews the documentation of each area that meets the criteria for national significance. When the Director determines that the requirements of this part were met and that enough non-objecting valid private property owners exist to encompass an adequate portion of the nationally significant features, the Director submits the information on the area (PNNL) to the National Park System Advisory Board. The board reviews the information and recommends whether or not the land with consenting owners

qualifies for national natural landmark designation.

(2) Notice of Advisory Board meetings to review national natural landmark nominations and meeting agendas are provided at least 60 days in advance of the meeting by publication in the **Federal Register**. The NPS also mails copies of the notice directly to consenting owners of areas that are to be considered at each meeting. Interested parties are encouraged to submit written comments and recommendations that will be presented to the board. Interested parties may also attend the board meeting and upon request may address the board concerning an area's national significance.

(h) *Submission to the Secretary.* The Director submits the recommendation of the Advisory Board and materials that the Director developed to the Secretary for consideration of the nominated area for national natural landmark designation.

(i) *Designation.* The Secretary reviews the materials that the Director submitted and any other documentation and makes a decision on national natural landmark designation. Areas that the Secretary designates as national natural landmarks are added to the National Registry of Natural Landmarks.

(j) *Third notification.* When the Secretary designates an area as a national natural landmark, the Secretary notifies in writing the landmark owner(s) of areas with fewer than 50 owners. A general notice of designated areas with 50 or more owners is published in one or more local newspapers of general circulation in the area. The Secretary also notifies the executive of the local governmental jurisdiction in which the landmark is located, Native American tribal governments and native villages and corporations in the area, the governor of the State, the congressional members who represent the district and State in which the landmark is located, and other interested authorities, organizations and individuals as deemed appropriate. The NPS prepares the notifications and is responsible for their distribution. Notices of new designations are also published in the **Federal Register**.

(k) *Presentation of plaque and certificate.* (1) After the Secretary designates an area as a national natural landmark, the NPS may provide each owner who so requests with a certificate signed by the Secretary of the Interior and the Director of the NPS at no cost to the owner(s). This certificate recognizes the owner's interest in protecting and managing the area in a manner that prevents the loss or

deterioration of the natural values on which landmark designation is based.

(2) If appropriate, NPS may also provide without charge a bronze plaque for display in or near the national natural landmark. Upon request, and to the extent NPS resources permit, the NPS may help arrange and participate in a presentation ceremony. In accepting a plaque or certificate, owners give up none of the rights and privileges of ownership or use of the landmark and the Department of the Interior does not acquire any interest in the designated property. After a presentation, the plaque remains the property of NPS. If the landmark designation is removed in accordance with the procedures in § 62.8, NPS may reclaim the plaque.

§ 62.5 Natural landmark criteria.

(a) *Introduction.* (1) *National significance* describes an area that is one of the best examples of a biological or geological feature known to be characteristic of a given natural region. Such features include terrestrial and aquatic ecosystems; geologic structures, exposures and landforms that record active geologic processes or portions of earth history; and fossil evidence of biological evolution. Because the general character of natural diversity is regionally distinct and correlated with broad patterns of physiography, many types of natural features are entirely inside one of the 33 physiographic provinces of the nation, as defined by Fenneman (Physiographic Divisions of the United States, 1928) and modified as needed by the NPS.

(2) Because no uniform, nationally applicable classification scheme for biological communities or geological features is accepted and used by the majority of organizations involved in natural-area inventories, a classification system for each inventory of a natural region was developed to identify the types of regionally characteristic natural features sought for representation on the National Registry of Natural Landmarks. Most types represent the scale of distinct biological communities or individual geological, paleontological, or physiographic features, most of which can be mapped at the Earth's surface at 1:24,000 scale or are traceable in the subsurface. In some cases, the NPS may further evaluate only a significant segment of a given natural feature, where the segment is biologically or geologically representative and where the entire feature is so large as to be impracticable for natural landmark consideration (e.g., a mountain range). Almost two-thirds of all national natural landmarks range from about 10 to 5,000 acres, but some

are larger or smaller because of the wide variety of natural features recognized by the National Natural Landmarks Program.

(b) *Criteria.* NPS uses the following criteria to evaluate the relative quality of areas as examples of regionally characteristic natural features:

(1) *Primary criteria.* Primary criteria for a specific type of natural feature are the main basis for selection and are described in the following table:

Criterion	Description	Example
Illustrative character	Area exhibits a combination of well-developed components that are recognized in the appropriate scientific literature as characteristic of a particular type of natural feature. Should be unusually illustrative, rather than merely statistically representative.	Alpine glacier with classic shape, unusual number of glaciological structures like crevasses, and well-developed bordering moraine sequences.
Present condition	Area has been less disturbed by humans than other areas	Large beech maple forest, only a small portion of which has been logged.

(2) *Secondary criteria.* Secondary criteria are provided for additional

consideration, if two or more similar area cannot be ranked using the primary

criteria. Secondary criteria are described in the following table:

Criterion	Description	Example
Diversity	In addition to its primary natural feature, area contains high quality examples of other biological and/or geological features or processes.	Composite volcano that also illustrates geothermal phenomena.
Rarity	In addition to its primary natural feature, area contains rare geological or paleontological feature or biological community or provides high quality habitat for one or more rare, threatened, or endangered species.	Badlands, including strata that contain rare fossils.
Value for Science and Education.	Area contains known or potential information as a result of its association with significant scientific discovery, concept, or exceptionally extensive and long term record of on-site research and therefore offers unusual opportunities for public interpretation of the natural history of the United States.	Dunes landscape where process of ecological succession was noted for first time.

§ 62.6 Natural landmark monitoring.

(a) *Owner contact.* The Field Offices of the NPS maintain periodic contacts with the owners of designated national natural landmarks to determine whether the landmarks retain the values that qualified them for landmark designation and to update administrative records on the areas.

(b) *Section 8 Report.* (1) The Secretary, through the NPS, prepares an annual report to the Congress on all designated national natural landmarks with known or anticipated damage or threats to one or more of the resources that made them nationally significant. This report is mandated by Section 8 of the National Park System General Authorities Act of 1970, as amended, (16 U.S.C. 1a-5).

(2) A landmark is included in this report if it has lost or is in imminent danger of losing all or part of its natural character to such a degree that one or more of the values that made it nationally significant are or will be irreversibly damaged or destroyed. In assessing the status of a landmark, NPS considers the condition of the landmark at the time of designation, including any changes that have occurred and any threats that could impact it in the future.

(3) Section 8 also requires the Secretary to make recommendations to the Congress on qualified areas for

consideration as additions to the National Park System. No legal mandate requires that the Congress take further action about national natural landmarks listed as damaged or threatened or about areas that are recommended for possible future additions to the National Park System.

(4) NPS Regional Offices are responsible for monitoring the condition of, and for completing status reports on, all designated national natural landmarks in their regions. In some cases, the NPS may arrange with outside individuals, agencies or organizations to monitor the status of selected national natural landmarks. NPS or its representative usually monitors national natural landmark condition and status during a visit.

(c) *Monitoring.* (1) The NPS or its representative notifies the owner(s) of a national natural landmark of his or her pending visit to the area to determine its status and condition, and informs the owner(s) of the purposes of monitoring and its relation to the Secretary's annual report on threatened or damaged landmarks.

(2) While monitoring conditions of designated national natural landmarks, neither NPS nor its representative will enter onto private property or onto public lands that are not otherwise open to the public without first obtaining permission from the owner(s) or

administrator(s). The NPS may monitor landmark condition without entering onto lands where required permission has not been granted by using other existing information, including telephone conversations with the owner(s) or manager(s) of the area, written materials provided by the owner or manager, or information previously developed by other Federal or State agencies or other scientific studies. The NPS provides owners with copies of monitoring reports on their property, which will include the name and affiliation of the individual(s) who completed the report.

(d) *Section 8 report preparation.* (1) After completion of landmark monitoring, the NPS Regional Offices forward their findings and recommendations to the NPS Washington Office. The NPS Washington Office reviews the Regional Office findings and recommendations and prepares a draft report listing only the national natural landmarks with significant known or anticipated damage or threats to the integrity of one or more of the resources that made the area nationally significant.

(2) Pertinent portions of this draft report, including any executive summary, are provided to the owner(s) or administrator(s) of national natural landmarks listed as is feasible, as well as to other interested authorities,

organizations and individuals. All individuals have 30 days to provide written comments to the NPS on the draft report. Comments may include additional information on the condition of landmarks or on the nature or imminence of reported damage or threats to these landmarks. Owners are also asked to indicate whether they would like to receive a copy of the final report, as described in paragraph (d)(3) of this section.

(3) The NPS reviews all comments on the draft report and prepares a final report, which the Director transmits to the Secretary for submission to the Congress. Upon release of the final report, the NPS will provide a copy of the report to the owner(s) of landmarks who are listed in the report and have requested copies and to other interested authorities, organizations and individuals.

(e) *Mining in the Parks Act.* If the NPS determines that an entire or partial national natural landmark may be irreparably lost or destroyed by surface mining activity, including exploration for or removal or production of minerals or materials, NPS notifies the person that is conducting the activity and prepares a report that identifies the basis for the finding that the activity may cause irreparable loss or destruction. The NPS also notifies the owner(s) of the national natural landmark in writing of its finding. The NPS submits to the Advisory Council on Historic Preservation the report and a request for advice about alternative measures that may be taken by the United States to mitigate or abate the activity. The authority for this action is contained in Section 9 of the Mining in the Parks Act of 1976 (16 U.S.C. 1908).

(f) *National Environmental Policy Act.* Federal agencies should consider the existence and location of designated national natural landmarks, and of areas found to meet the criteria for national significance, in assessing the effects of their activities on the environment under section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4321). The NPS is responsible for providing requested information about the National Natural Landmarks Program for these assessments.

§ 62.7 Natural landmark modifications.

(a) *Determination of need for modifications.* After designation, the modification of the boundaries of a natural landmark, and/or revision of information about it, may be appropriate. For example, because of new information or changes in the condition of an NNL, the boundary may have to be reduced or expanded or

information about the NNL may have to be revised. Additional study may reveal that the area has nationally significant values that had not been previously documented. The NPS determines that landmark modifications are necessary through administration of the program. In addition, the NPS may receive suggestions for landmark modifications from other Federal agencies, State natural area programs, and other public and private organizations or individuals. The NPS determines the validity of these suggestions by applying the natural landmark criteria or by conducting additional study.

(b) *Boundary expansion.* (1) Three justifications exist for enlarging the boundary of a national natural landmark: better documentation of the extent of nationally significant features, professional error in the original designation, or additional landowners with nationally significant features on their property desiring the designation.

(2) If the NPS determines that an expansion of the boundary of the national natural landmark is appropriate, it will use the designation process outlined in § 62.4(b) through (j). If a boundary is expanded, only the owners in the newly considered but as yet not designated portion of the area are notified and asked if they object to designation.

(c) *Boundary reduction.* Two justifications exist for reducing the boundary of a national natural landmark: Loss of integrity of the natural features or professional error in the original designation. If the NPS determines that a reduction in the national natural landmark boundary is indicated, the designation removal process outlined in § 62.8 is used.

(d) *Change in description of values.* If the NPS determines that a change in the description of the national natural landmark's nationally significant values is warranted, the NPS prepares the recommended changes and the Director submits the changes and all supportive documentation to the National Park System Advisory Board. The Advisory Board reviews the information submitted by the Director and makes recommendations to the Secretary. The Secretary reviews the supportive documentation and the recommendations of the board, and may approve changes in the description of a landmark's nationally significant values.

(e) *Minor technical corrections.* Minor technical corrections to a national natural landmark boundary and other administrative changes in landmark documentation not covered under paragraphs (a) through (d) of this section may be approved by the Director

without a review by the Advisory Board or the approval by the Secretary. Minor technical boundary corrections are defined as those that involve a change in less than five percent of the total area of the national natural landmark. The NPS notifies owners of proposed minor technical boundary corrections or other administrative changes in documentation, as described in this paragraph (e). Based upon owner response to this notification, the NPS determines whether the proposed change is a minor technical correction to landmark documentation that can be made administratively or whether the procedures outlined in § 62.4(d) through (j) must be followed.

§ 62.8 Natural landmark designation removal.

(a) *Criteria for removal.* (1) Except as provided in paragraph (f) of this section, national natural landmark designation is removed from an area:

(i) When it can be shown that an error in professional judgment was made such that the site did not meet the criteria for national significance at the time of designation;

(ii) When the values which originally qualified it for designation have been lost or destroyed; or

(iii) When applicable designation procedures were not followed because of prejudicial failure.

(2) Any affected owner of a designated national natural landmark may initiate the removal by submitting to the Director a request for removal of designation, stating the grounds for this removal and specifying the error in professional judgment, loss of natural values or prejudicial procedural error. A prejudicial procedural error is one that reasonably may be considered to have affected the outcome of the designation process.

(3) Within 60 days of receiving a removal request, the NPS notifies the party submitting the request of whether the NPS considers the documentation sufficient to consider removal of the natural landmark designation.

(b) *Review of removal information.* The NPS reviews the information outlining the grounds for removal. When necessary, an on-site evaluation of the area may be made, as outlined in § 62.4(c). Based on all available information, the NPS determines whether the area no longer merits designation as a national natural landmark.

(c) *Notifications.* When NPS has determined that area no longer merits designation as a national natural landmark, the NPS notifies the owner(s) and other interested parties as specified

in § 62.4(d)(1)–(3). Notice of the proposed removal is also published in the **Federal Register**. The notified individuals may comment within 60 days of the date of the notice before a recommendation for removal is submitted to the Secretary. All comments received will be considered in the review and in the decision to remove the national natural landmark designation.

(d) *Removal from the registry.* (1) The Director reviews the information about a recommended removal from the Registry and determines whether the procedural requirements in this section have been met. If the Director confirms the findings, he or she submits a recommendation for removal to the National Park System Advisory Board. The Advisory Board reviews the submitted information and recommends the removal from or retention of the area in the registry.

(2) The recommendations of the Advisory Board and the Director are submitted by the Director to the Secretary for his or her consideration. If the Secretary concurs, he or she directs the removal of the landmark from the National Registry of Natural Landmarks. Any area from which designation is withdrawn solely because of procedural error as described in paragraph (a)(1)(iii) of this section continues to meet the criteria for national significance.

(e) *Notification of removal from the registry.* When the Secretary removes a landmark from the National Registry of Natural Landmarks, the Secretary will notify the national natural landmark owner(s), the executive of the local government jurisdiction in which the area is located, Native American tribal governments and native villages and corporations in the area, the governor of the State, Congressional members who represent the Congressional District and State in which the area is located, and other interested authorities, organizations, and individuals, as outlined in § 62.4(d)(1), (2) and (3). The NPS is responsible for preparing and distributing the written notices. The NPS periodically publishes notice(s) of

removal in the **Federal Register**. The NPS may reclaim the natural landmark plaque when a landmark is removed from the National Registry of Natural Landmarks.

(f) *Previously designated landmarks.* (1) NPS will notify owners of national natural landmarks designated before the effective date of these regulations to give them an opportunity within 90 days of the notice to request the removal of a national natural landmark designation from their property by writing to the Director. If owners do not respond within 90 days of the notification, the national natural landmark designations of their properties will be retained.

(2) When only some owners of a national natural landmark in multiple ownership request the removal of a national natural landmark designation from their portions, the NPS determines whether, after removal of these portions, a sufficient acreage of the national natural landmark remains to demonstrate the original nationally significant features without undue compromise. If so, the boundaries of the national natural landmark are adjusted to remove the properties of owners who object to the designation. If not, the entire national natural landmark designation is removed and the area is removed from the National Registry of Natural Landmarks.

(3) Any removals of existing national natural landmark designations and related recommended boundary adjustments, must be presented by the Director to the National Park System Advisory Board for review before being presented to the Secretary who formally removes a national natural landmark from the national registry or approves changes in the national natural landmark boundary. Areas from which the designation has been removed may be reconsidered for designation under these regulations if ownership or other circumstances change.

§ 62.9 General provisions.

(a) *Agreements.* The NPS may enter into contracts, memoranda of agreement, cooperative agreements, or

other types of agreements with other Federal agencies, States, counties, local communities, private organizations, owners, Native American tribal governments, or other interested individuals or groups to assist in administering the National Natural Landmarks Program. The agreements may include but are not limited to provisions about identification, evaluation, monitoring or protecting national natural landmarks.

(b) *Information dissemination.* The NPS may conduct educational and scientific activities to disseminate information on national natural landmarks, the National Natural Landmarks Program, and the benefits derived from systematic surveys of significant natural features to the general public and to interested local, State and Federal agencies and private groups. Dissemination of information on ecologically or geologically fragile or sensitive areas may be restricted when release of the information may endanger or harm the sensitive resources.

(c) *Procedural requirements.* Any individual, agency, or organization acting as a representative of the NPS in the identification, evaluation, monitoring or protection of national natural landmarks is required to follow this part.

(d) *Additional program information.* Further guidance on the operation of the National Natural Landmarks Program, as based on this part, may be found in other program documents that are available from the NPS.

(e) *Administrative recourse.* Any person has the right to insist that NPS take into account all the provisions in this part for national natural landmark designation or removal.

Note: This document was received at the Office of the Federal Register on April 14, 1999.

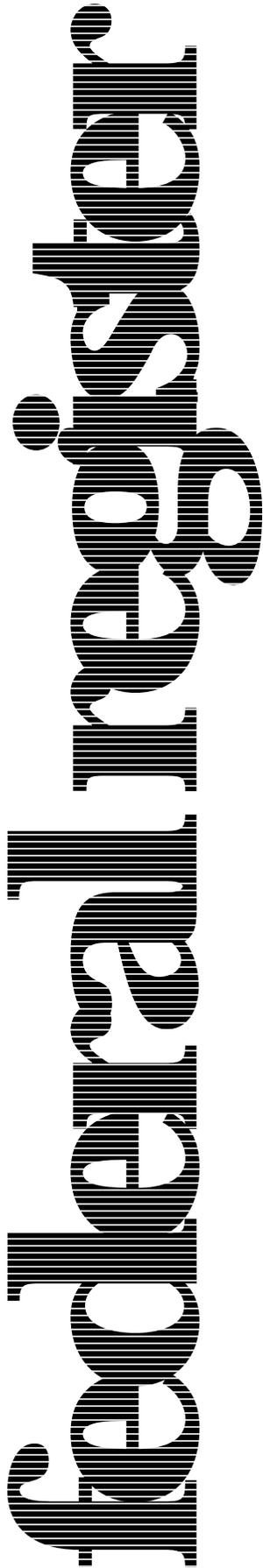
Dated: June 10, 1998.

William Leary,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–9762 Filed 5–11–99; 8:45 am]

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Wednesday
May 12, 1999

Part IV

**Department of
Housing and Urban
Development**

24 CFR Part 5
Revised Restrictions on Assistance to
Noncitizens; Final Rule

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 5

[Docket No. FR-4154-F-03]

RIN 2501-AC36

**Revised Restrictions on Assistance to
Noncitizens**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates HUD's noncitizens regulations to incorporate the amendments made to section 214 of the Housing and Community Development Act of 1980 by section 592 of the Quality Housing and Work Responsibility Act of 1998 (the "1998 Act"). Specifically, section 592 of the 1998 Act provides that PHAs, notwithstanding the requirements of Section 214, may elect not to affirmatively establish and verify eligibility before providing financial assistance to an individual or family. Before this amendment, statutory authority allowed PHAs to opt-out of compliance with the Section 214 immigration verification requirements in their entirety. This final rule also makes final a November 29, 1996 interim rule and takes into consideration the public comments submitted on the interim rule.

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

1. *For the Public Housing, Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation (except Single Room Occupancy-"SRO") programs:* Patricia Arnaudo, Office of Public and Indian Housing, Room 4222, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 619-8201;

2. *For the Section 8 Moderate Rehabilitation SRO program:* John Garrity, Office of Community Planning and Development, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-4300;

3. *For the other Section 8 programs, the Section 236 programs, and Housing Development Grants and Rent Supplement:* Helene DeVous, Office of Housing, Room 6146, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-2866.

4. *For the Section 235 homeownership program:* Phillip Murray, Office of

Lender Activities and Program Compliance, Office of Housing, Room B133, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410, telephone (202) 708-1515.

Persons with hearing or speech impairments may access the above telephone numbers via TTY by calling the Federal Information Relay Service at 1-800-877-8339. With the exception of the "800" number, none of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. HUD's Implementation of Section 214 of the Housing and Community Development Act of 1980

On March 20, 1995 (60 FR 14816), HUD issued its final rule implementing Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) ("Section 214") and that rule became effective on June 19, 1995. Section 214 prohibits HUD from making certain financial assistance available to persons other than United States citizens, nationals, or specified categories of eligible noncitizens.

HUD's March 20, 1995 final rule promulgated virtually identical "noncitizens" regulations for the various HUD programs covered by Section 214. On March 27, 1996 (61 FR 13614), HUD published a final rule eliminating the repetitiveness of these duplicative regulations by consolidating the noncitizens requirements in a new subpart E to 24 CFR part 5. HUD established part 5 (entitled "General HUD Program Requirements; Waivers") to describe those requirements which are applicable to one or more program regulations.

II. The November 29, 1996 Interim Rule

On November 29, 1996 (61 FR 60535), HUD published an interim rule amending its noncitizens regulations to incorporate the amendments made to Section 214 by the Use of Assisted Housing by Aliens Act of 1996 (title V, Subtitle E of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, approved September 30, 1996; 110 Stat. 3009-546) (the "1996 Immigration Act"). Section 577 of the 1996 Immigration Act directed that HUD's implementing regulations "be issued in the form of an interim final rule, which shall take effect upon issuance." Accordingly, the amendments made by the November 29, 1996 interim rule were effective upon publication, but also provided members of the public with a 60-day period to submit their comments on the interim rule.

The most significant changes made to Section 214 by the 1996 Immigration Act, and consequently to HUD's Section 214 regulations by the November 29, 1996 interim rule, are as follows:

1. HUD's interim noncitizens regulations provide that responsible entities may not make assistance available to a family applying for assistance until at least the eligibility of one family member has been established, and assistance must be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established.

2. The interim regulations require that continued financial assistance be provided to an eligible mixed family after November 29, 1996 (the effective date of the interim rule) be prorated based on the percentage of family members that are eligible for assistance. An eligible mixed family is a family containing members with eligible immigration status, as well as members without such status, and that meets the criteria for eligibility for continued assistance as described in Section 214.

3. The interim regulations require that HUD suspend financial assistance to a family upon determining that the family has knowingly permitted an ineligible individual to reside on a permanent basis in the family's unit. The suspension shall be for a period of at least 24 months. This provision does not apply if the ineligible individual has already been considered in calculating any proration of assistance for the family.

4. The interim regulations allow responsible entities administering financial assistance under a Section 214 covered program to require that individuals who declare themselves to be U.S. citizens verify the declaration through appropriate documentation (e.g., United States passport, resident alien card, registration card, social security card, or other appropriate documentation). Before this amendment, only individuals who were not U.S. citizens or nationals were required to present documentation of their eligible immigration status.

5. The November 29, 1998 interim rule revised the maximum period for deferral of termination of assistance provided after November 29, 1996 from an aggregate of 3 years to an aggregate of 18 months. The 18-month maximum deferral period does not apply to refugees under section 207 of the Immigration and Nationality Act or to individuals seeking asylum under section 208 of that Act. The maximum deferral period for deferrals granted

prior to November 29, 1996 continues to be 3 years.

6. The interim regulations provide that an individual has a maximum period of 30-days, starting from the date of receipt of the notice of denial or termination of assistance, to request a fair hearing. HUD believes that due process requires that assistance already being provided to a tenant may not be delayed, denied, reduced or terminated until completion of the fair hearing.

7. The interim regulations provide that a Public Housing Agency (PHA) may elect not to comply with the requirements of 24 CFR part 5, subpart E. This amendment was based on the language of subsection 214(h)(2), which was added by section 575 of the 1996 Immigration Act. Subsection 214(h)(2) provided that "[a] Public Housing Agency . . . may elect not to comply with this section." The use of the word "section" (as opposed to "subsection") in this provision, in a strict statutory construction, referred to Section 214 in its entirety.

III. Section 592 of the Quality Housing and Work Responsibility Act of 1998

On October 21, 1998, President Clinton signed into law HUD's fiscal year (FY) 1999 Appropriations Act, which includes the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act; Public Law 105-276; 112 Stat. 2461) (the "1998 Act"). The 1998 Act constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. The 1998 Act enacts many of the reforms originally proposed in Secretary Andrew Cuomo's HUD 2020 Management Reform Plan, HUD's public housing bill and Congressional bills that are directed at revitalizing and improving HUD's public housing and Section 8 tenant-based programs.

Section 592 of the 1998 Act (entitled "Use of Assisted Housing by Aliens") removed the option of PHAs to elect not to comply with Section 214. In its place, the 1998 Act provides that PHAs, notwithstanding the requirements of Section 214, may elect not to affirmatively establish and verify eligibility before providing financial assistance to an individual or family (as discussed above, Section 214, and HUD's noncitizens regulations, provide that no individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member). Section 592 of the 1998 Act was

effective upon enactment (October 21, 1998).

On February 18, 1999 (64 FR 8192), HUD published a Notice of Initial Guidance in the **Federal Register**. The notice advises the public of those provisions of the 1998 Act that are effective immediately and of action that may or should be taken immediately by affected public and assisted housing providers. The February 18, 1999 notice advises the public that section 592 of the 1998 Act removed the option of PHAs to elect not to comply with Section 214. Further, the notice provides that in the event a PHA elected to "opt-out" of compliance with Section 214, the PHA may, but is not required to, immediately commence verification of eligibility of families for whom eligibility status under Section 214 has not yet been undertaken. A PHA must, however, verify eligibility status in accordance with the requirements of Section 214 and HUD's implementing regulations at 24 CFR part 5, subpart E, no later than the date of the family's annual reexamination.

IV. This Final Rule

This rule makes final the amendments in the November 29, 1996 interim rule, and takes into consideration the public comments submitted on the interim rule. After careful consideration of all the comments received on the November 29, 1996 interim rule, HUD has made one change as a result of public comment. Specifically, HUD has revised the list of documentation that may constitute acceptable evidence of U.S. citizenship or U.S. nationality (see discussion of public comment captioned "Rule Should Specify Acceptable Evidence of Citizenship" in section V.B of this preamble).

This final rule updates HUD's noncitizens regulations to incorporate the amendments made by section 592 of the 1998 Act. Specifically, the final rule removes § 5.501 (which granted PHAs the ability to opt-out of compliance with Section 214) and revises § 5.512 (entitled "Verification of eligible immigration status") to state that PHAs may elect to provide financial assistance to an individual or family before verifying the eligibility of the individual or one family member.

This final rule also makes a correction to § 5.508 of the November 29, 1996 interim rule. The 1996 Immigration Act permits responsible entities to verify the eligibility of individuals who declare themselves to be U.S. citizens or nationals. Although the preamble to the November 29, 1996 interim rule correctly referred to both U.S. citizens and nationals, § 5.508 of the interim

rule, which implemented this statutory provision, inadvertently failed to refer to U.S. nationals. This final rule makes the necessary correction to § 5.508.

This final rule does not implement the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193, approved August 22, 1996; 110 Stat. 2105) which concern immigration. The changes required by that Act will be the subject of future rulemaking.

Readers should note that the regulatory text of this final rule is identical to that of the November 29, 1996 interim rule, with the exception of the changes implementing section 592 of 1998 Act and the changes to § 5.508.

V. Discussion of Public Comments on the November 29, 1996 Interim Rule

The public comment period on the November 29, 1996 interim rule closed on January 28, 1997. HUD received twenty-two comments, including comments from nonprofit organizations, PHAs, and PHA interest organizations. This section of the preamble presents a summary of the significant issues raised by the public commenters on the November 29, 1996 interim rule, and HUD's responses to these comments.

A. Comments on the Statutory PHA "Opt Out" Provision (Section 5.501)

Many of the comments received regarding the PHA "opt-out" provision were submitted before publication of the November 29, 1996 interim rule. The vast majority of these comments urged that HUD interpret section 575 of the 1996 Immigration Act to permit PHAs to opt-out of compliance with Section 214 in its entirety. As noted above, the recommended interpretation of section 575 was in fact the position adopted by HUD in the November 29, 1996 interim rule and this interpretation was based on the statutory language itself.

Many of these commenters noted that in some cities, such as New York City, most ineligible noncitizens are part of families that include citizens, nationals, or other eligible persons, and are "deeply woven into the fabric of everyday life." The commenters wrote that it would be a great hardship to such families to penalize these ineligible persons. Other commenters wrote that the recommended interpretation of the opt-out provision would further HUD's policy of "vest[ing] in local public housing agencies the maximum amount of responsibility in the administration of their housing programs."

HUD Response. As noted above, section 592 of the 1998 Act amended the scope of the PHA opt-out provision.

This final rule updates 24 CFR part 5, subpart E to incorporate the amendments made by section 592 of the 1998 Act. Specifically, the final rule removes § 5.501 (entitled "PHA election whether to comply with this subpart"), which allowed PHAs to opt-out of compliance with the Section 214 requirements. The final rule also amends § 5.512 (entitled "Verification of eligible immigration status") to state that PHAs may elect to provide financial assistance to an individual or family before verifying the eligibility of the individual or one family member.

B. Comments on the Submission of Evidence of Eligible Status (Section 5.508)

Comment: Nondiscrimination Requirements Should be Codified. Two commenters suggested that HUD amend the interim rule to explicitly provide that an entity administering a program covered by Section 214 may not request verification of citizenship based on race, national origin, or personal characteristics, such as accent, language spoken, or familial association with a noncitizen.

HUD Response. As § 5.524 makes clear, all regulatory procedures in the implementation of Section 214 must be administered in accordance with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100. Further, section VI of this preamble reminds the public that the Section 214 prohibitions on assistance to noncitizens must be implemented in the uniform manner prescribed, without regard to race, national origin, or personal characteristics (e.g., accent language spoken, or familial association with a noncitizen). The individual regulations for the HUD programs subject to Section 214 specify the fair housing and civil rights requirements applicable to each program.

Comment: Senior Noncitizens Should be Subject to Stricter Verification Procedures. Section 214 provides that certain senior noncitizens (those 62 years of age or older) need only submit a signed declaration of eligible immigration status and a proof of age document for purposes of verifying their eligibility to receive assistance. All other noncitizens, however, must

submit their documentation of eligible immigration status for verification by the Immigration and Naturalization Service (INS). Before the amendments made by the 1996 Immigration Act, Section 214 limited this more lenient treatment to senior noncitizens receiving assistance on June 19, 1995 (the effective date of HUD's original March 20, 1995 noncitizens rule). The November 29, 1996 interim rule expanded the exemption to include senior noncitizens receiving assistance on September 30, 1996 (the date of enactment of the 1996 Immigration Act) or applying for assistance on or after that date. Two commenters objected to this amendment, and wrote that the higher standard of documentation should continue to be required of senior noncitizens who apply after September 30, 1996.

HUD Response. This regulatory amendment merely tracks the revision made to section 214(d)(4) by the 1996 Immigration Act. Accordingly, HUD does not have the discretion to modify this provision in the manner suggested by the commenters.

Comment: Rule Should Specify Acceptable Evidence of Citizenship or Nationality. The 1996 Immigration Act allows responsible entities administering financial assistance under a Section 214 covered program to require that individuals who declare themselves to be U.S. citizens or nationals to verify the declaration through appropriate documentation. Before this amendment, only individuals who were not U.S. citizens or nationals were required to present documentation of their eligible immigration status.

Three commenters recommended that HUD provide greater specificity regarding what documentation constitutes acceptable evidence of citizenship and nationality. One of the commenters noted that two of the documents listed as examples in § 5.508 (a resident alien card and a Social Security Card) do not constitute adequate evidence of citizenship or nationality. The commenter wrote that several of the other listed examples, such as a "registration card" or "other appropriate documentation," were too vague. One commenter suggested that acceptable proof of citizenship should include a signed declaration of citizenship accompanied by proof that a timely request for supporting documentation has been made. According to the commenter, this would ease the situation encountered by applicants who have difficulty obtaining original birth certificates from distant jurisdictions.

HUD Response. The commenters are correct that neither a resident alien card nor a Social Security Card is evidence of U.S. citizenship or U.S. nationality. Therefore, HUD has removed the references to these documents, as well as the reference to a "registration card", from § 5.508(b)(1). If HUD determines that additional examples are necessary, HUD will more appropriately provide them through notice, handbook, or other non-regulatory guidance.

C. Comments on Verification of Eligible Status: Timing of Procedure and Proration of Assistance (Section 5.512)

Comment: Verification of All Household Members Should be Required Before Admission. HUD's noncitizens regulations provide that responsible entities may not make assistance available to a family applying for assistance until at least the eligibility of one family member has been established, and assistance must be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established.

Several commenters indicated that proration of rent for newly admitted families due to an inability to complete the verification of eligibility of all family members before admission is a problem, both to the applicant and to the housing provider. They wrote that families who have not yet moved in will choose not to pay a prorated rent. If families are admitted with full subsidy after verification of eligibility of only one family member, the family and housing provider will both suffer losses if proration becomes required, since it is unlikely that the family will be able to pay the higher rent and eviction will follow.

Three commenters suggested that this perceived difficulty might be resolved by requiring verification of all household members before admission. The commenters wrote that this would not constitute an undue delay in the provision of assistance. According to two of these commenters, housing providers usually receive verification within one to two weeks after submission of the appropriate documentation. The commenters noted that the regulations grant individuals and families up to 30 days to submit the required documentation—a longer time period than what the commenters' experience indicates it takes to complete the entire verification process.

HUD Response. Subsection 214(d)(4)(B)(ii), as amended by the 1996 Immigration Act, prohibits the delay, denial, reduction, or termination of assistance to an applicant or tenant

pending the completion of the verification process. Assistance to newly admitted families may not be prorated based on the inability of the responsible entity to complete verification for all family members.

The commenters are correct in noting that assistance may need to be prorated if the verification process determines that one or more family members is not eligible. HUD acknowledges that families may be unable to pay the higher rent resulting from proration. Nevertheless, the requirement that assistance be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established is statutorily mandated by the 1996 Immigration Act.

Comment: Rent Should be Retroactively Reduced Following Verification of Status for All Family Members. Another commenter suggested that, where assistance was initially prorated because the status of all the family members had not been established, the rent should be reduced retroactively to the date of admission following verification of the eligible status of all the family members.

HUD Response. As noted in the response the preceding comment, responsible entities may not prorate assistance to a family before the completion of the verification process.

D. Comments on Delay, Denial, Reduction, or Termination of Assistance (Section 5.514)

Comment: Verification Should be Completed Before Admission. One commenter praised HUD's interpretation that assistance to a tenant not be delayed, denied, reduced, or terminated until the completion of an informal hearing when a timely request for such a hearing is made. This contrasted with the opinion of another commenter, who stated that, although it was the intent of the Congress to not delay assistance to current program participants, no such authority exists regarding applicants. Accordingly, this commenter wrote all aspects of eligibility need to be verified before a family is admitted.

HUD Response. HUD's noncitizens regulations track the statutory language of the 1996 Immigration Act. Specifically, subsection 214(d)(4)(B)(ii), as amended by the 1996 Immigration Act, prohibits the delay, denial, reduction, or termination of assistance to an applicant or tenant pending the completion of the verification process.

Comment: What Constitutes "Knowingly" Permitting an Ineligible Person to Reside in an Assisted Housing Unit? Several commenters wrote to

express uncertainty regarding § 5.514(c)(1)(iii), which provides that assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, if—

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months * * *

Several commenters asked for greater clarity regarding what constitutes "knowingly" permitting an ineligible person to reside in an assisted unit on a permanent basis. One of the commenters suggested that a deliberate intention to deceive the housing provider (i.e., knowledge about the ineligible status and intentionally permitting permanent residence in the unit), should be the basis for the imposition of sanctions.

HUD Response. HUD believes that "knowingly" has the everyday meaning normally associated with the term. Specifically, the word "knowingly," as used in this provision of the 1996 Immigration Act, means that a tenant possesses knowledge that an ineligible individual is residing (on a permanent basis) in the unit.

Comment: What Constitutes "Termination" of Assistance Under Section 5.514(c)(1)(iii)? As noted above, HUD's noncitizens regulations at 24 CFR 5.514(c)(1)(iii) provide that, if a family member knowingly permits an ineligible individual to reside in an assisted housing unit, the family member's assistance must be "terminated" for a period of not less than 24 months. Several commenters questioned whether the effect of this termination is that the formerly assisted family is required to reapply for assistance after the expiration of the prescribed period (or immediately upon termination, with a required wait of the prescribed period), or whether assistance is to be automatically reinstated after the prescribed period.

HUD Response. Termination of assistance under § 5.514(c)(1)(iii) would be no different than termination of assistance for any other reason under the individual program requirements for each of the HUD programs covered by Section 214. For example, recipients of Section 8 tenant-based assistance who violate § 5.514(c)(1)(iii) are subject to the termination procedures described in 24 CFR part 982, subpart L ("Family Obligations; Denial and Termination of Assistance").

Comment: Maximum Period or Termination Should Exceed 24 Months. One commenter wrote that HUD should

establish conditions for imposing a termination period longer than the statutory minimum 24 month sanction. Subsection 214(d)(6), and HUD's implementing regulation at § 5.514(c)(1)(iii), provides that HUD shall terminate assistance for a period of "not less than 24 months."

HUD Response. At this time, HUD is not amending 24 CFR part 5, subpart E to incorporate the recommendations made by the commenter. The establishment of regulatory criteria for the imposition of termination periods greater than 24 months would constitute a substantive revision of HUD's noncitizens regulations. Accordingly, HUD would implement such changes only after providing the public with notice and the opportunity to comment. HUD would not include the revisions suggested by the commenter in a final rule issued for effect. Should HUD decide to provide for termination periods of greater than 24 months, it will issue a future rulemaking accompanied by a request for public comment.

Comment: Time Period for Requesting Hearing Should Conform to Hearing Procedures Established by Responsible Entity. One commenter recommended that the time period for requesting a hearing on a negative determination be consistent with the amount of time established by the responsible entity for all terminations of assistance (such as 10 days).

HUD Response. The regulatory language of § 5.514 conforms to the language of the 1996 Immigration Act, which provides that the Secretary of HUD shall provide a "reasonable period, not to exceed 30 days" to appeal an INS eligibility determination. At this time, HUD is not revising its noncitizens regulations to permit the establishment of less than a 30-day period for requesting an informal hearing. Such a change would constitute a substantive revision to the November 29, 1996 interim rule, and could not be implemented through a rule issued for effect. In the event HUD determines that responsible entities should be provided with the flexibility to modify the 30-day period for requesting a hearing, it will implement the change using notice and comment rulemaking procedures.

E. Comments on Deferral of Termination of Assistance for Ineligible Families (Section 5.518)

Comment: Requested Clarifications Regarding Eligibility and Timing for Temporary Deferral of Termination of Assistance. One commenter asked under what circumstances anyone would now receive a deferral of termination of

assistance. According to the commenter, deferrals were only given to those families living and receiving assistance in Section 214 covered properties on or before June 19, 1995. Another question raised was whether a family that chose proration of assistance before November 29, 1996 and that chooses deferral of termination after that date is limited to a deferral of 18 months.

HUD Response. HUD believes that it would be the exceptional case in which a family would be eligible for deferral of termination of assistance in 1999. As the commenter notes the statute provides deferral of termination of assistance for families living and receiving assistance in Section 214 covered properties on or before June 19, 1995. It is conceivable that the verification process or appeals process may have significantly delayed a final eligibility determination such that a family receiving assistance on or before June 19, 1995 would now find themselves faced with termination of assistance (due to lack of eligibility), and would therefore be eligible for deferral of termination of assistance. Again, however, HUD believes that this would be the exception.

With respect to a family that is eligible for deferral of termination and chooses deferral of termination of assistance after November 29, 1996, the period of deferral of termination is limited to 18 months.

F. Comments on Continued Full Assistance to Ineligible Family Members (Section 5.518)

Comment: Rule Should be Clarified Regarding Continued Assistance Provided Before November 29, 1996. One commenter wrote that it was not completely clear that "continued assistance," for purposes of families receiving housing assistance before November 29, 1996, means non-prorated assistance. The commenter requested that § 5.518(a)(2) be revised to clarify this provision of the 1996 Immigration Act. In addition, this commenter wrote that the aggregate deferral period for a tenant who was granted a temporary deferral before November 29, 1996, is three years from the date the first deferral was granted.

HUD Response. Section 5.518(a)(2) provides, a family granted continued assistance before November 29, 1996 is entitled to receive non-prorated assistance. A family granted continued assistance after November 29, 1996 must receive prorated assistance. In response to the commenter's second comment, § 5.518(b)(3) provides that the "aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years."

Comment: Reference to Refugees and Asylees is Confusing. One commenter wrote that the reference to refugees and asylees in § 5.518(b)(3) was confusing, since these individuals have eligible status under the statute and their presence in a family would not be cause for terminating assistance or deferring termination any more than the presence of a citizen would be.

HUD Response. The language of § 5.518(b)(3) exempting certain categories of noncitizens from the 18-month maximum deferral period tracks the statutory language of the 1996 Immigration Act. The language serves to remind responsible entities of the statutory exemption. Accordingly, the language has been retained.

VI. Nondiscrimination in the Implementation of Section 214

HUD reiterates the statement made in the March 20, 1995 final rule and the November 29, 1996 interim rule that all regulatory procedures in implementation of Section 214 must be administered in the uniform manner prescribed without regard to race, national origin, or personal characteristics (e.g., accent, language spoken, or familial association with a noncitizen).

VII. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this interim rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4; approved March 22, 1995) (UMRA) 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 does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed this final rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. As explained in the preamble to the November 29, 1996 interim rule, the implementation of HUD's noncitizen requirements have only a minimal impact on small housing project owners, small mortgagees, and small housing agencies. The amendments made final by this rule do not alter that previous determination. This final rule does not require the creation of new procedures or impose significant additional costs on responsible entities. Rather, the requirements of the final rule can be satisfied through the use of existing procedures. For example, the final rule prohibits responsible entities from making assistance available to a noncitizen until the necessary documentation establishing eligible immigration status is verified. This requirement can be fulfilled by utilizing the existing verification procedures. Likewise, current methods may be used to prorate the assistance provided to an eligible mixed family receiving continued assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That finding continues to be applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final have no federalism implications, and that the policies are not subject to review under the Order. This interim rule addresses immigration, a topic exclusively the province of the Federal government, and the effect is the direct result of the statute that imposes the restriction against assistance to noncitizens, rather than a result of HUD's exercise of

discretion in promulgating a rule to implement the statute.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart E—Restrictions on Assistance to Noncitizens

2. The authority citation for subpart E continues to read as follows:

Authority: 42 U.S.C. 1436a and 3535(d).

§ 5.501 [Removed]

3. Remove § 5.501.

4. Section 5.508 is amended by revising paragraphs (b)(1), (b)(2), (h)(2) and (h)(3) to read as follows:

§ 5.508 Submission of evidence of citizenship, or eligible immigration status.

* * * * *

(b) * * *

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

- (i) A signed declaration of eligible immigration status; and
- (ii) Proof of age document.

* * * * *

(h) * * *

(2) *Thirty-day extension period.* Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

* * * * *

5. Section 5.510 is amended by revising paragraph (b) to read as follows:

§ 5.510 Documents of eligible immigration status.

* * * * *

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in § 5.506(a) for the specific immigration status claimed by the individual.

6. Section 5.512 is amended by:

- a. Revising paragraph (a);
- b. Adding new paragraph (b); and
- c. Redesignating existing paragraphs (b) through (d) as paragraphs (c) through (e), respectively to read as follows:

§ 5.512 Verification of eligible immigration status.

(a) *General.* Except as described in paragraph (b) of this section and § 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with § 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with § 5.508.

(b) *PHA election to provide assistance before verification.* A PHA that is a responsible entity under this subpart may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

* * * * *

7. Section 5.514 is amended by:

- a. Revising paragraph (b);

- b. Revising paragraph (c)(1);
- c. Revising paragraph (e)(1); and
- d. Revising paragraph (f)(1), to read as follows:

§ 5.514 Delay, denial, reduction or termination of assistance.

* * * * *

(b) *Restrictions on delay, denial, reduction or termination of assistance.*

(1) *Restrictions on reduction, denial or termination of assistance for applicants and tenants.* Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with § 5.520; or

(vi) Assistance for a mixed family is continued in accordance with §§ 5.516 and 5.518; or

(vii) Deferral of termination of assistance is granted in accordance with §§ 5.516 and 5.518.

(2) *Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants.* In addition to the factors listed in paragraph (b)(1) of this section,

assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

(c) *Events causing denial or termination of assistance.* (1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 5.508(g) or by the expiration of any extension granted in accordance with § 5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

* * * * *

(e) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

* * * * *

(f) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS appeal decision issued in accordance with paragraph (e) of this section.

* * * * *

8. Section 5.516 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 5.516 Availability of preservation assistance to mixed families and other families.

* * * * *

(c) *Assistance available to other families in occupancy.* Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible

immigration status, as set forth in paragraphs (c)(1) and (2) of this section.

* * * * *

9. Section 5.518 is amended by revising paragraphs (a), (b)(3) and (b)(5) to read as follows:

§ 5.518 Types of preservation assistance available to mixed families and other families.

(a) *Continued assistance.* (1) *General.* A mixed family may receive continued housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in § 5.506; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(2) *Proration of continued assistance.* A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in § 5.520.

(b) * * *

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

* * * * *

(5) *Determination of availability of affordable housing at end of each deferral period.* (i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section.

Specifically, the responsible entity must:

(A) *For Housing covered programs:* Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) *For Section 8 or Public Housing covered programs:* Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

* * * * *

10. Section 5.526 is revised to read as follows:

§ 5.526 Protection From liability for responsible entities and State and local government agencies and officials.

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C 1436a(e)).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

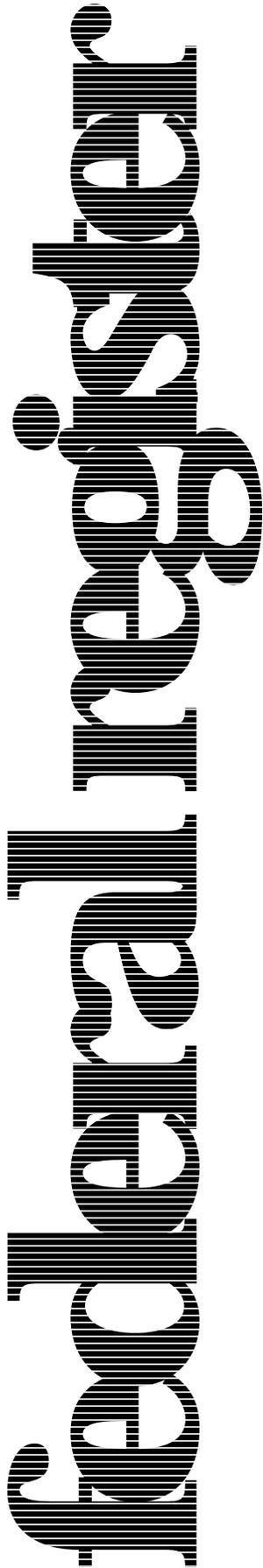
Dated: April 30, 1999.

Andrew Cuomo,

Secretary.

[FR Doc. 99-11917 Filed 5-11-99; 8:45 am]

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Wednesday
May 12, 1999

Part V

**Department of
Housing and Urban
Development**

24 CFR Part 761
Public Housing Drug Elimination:
Program Formula Allocation; Proposed
Rule

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 761

[Docket No. FR-4451-P-02]

RIN 2577-AB95

**Public Housing Drug Elimination
Program Formula Allocation**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD regulations to replace the competitive distribution of HUD's Public and Indian Housing Drug Elimination Program (PHDEP) funds with a formula allocation funding system. The purpose of this amendment is to provide a more timely, predictable and equitable allocation of PHDEP funds. The competitive distribution of funding through the Assisted Housing component of the Drug Elimination Program would not be affected by this rule.

DATES: Comment Due Date: July 12, 1999.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Program Analyst, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-1197 x.4237; or Tracy C. Outlaw, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675-1600 (these are not toll-free numbers). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339. Also, please see HUD's website at <http://www.hud.gov/pih/legis/titlev.html> for additional PHDEP information.

SUPPLEMENTARY INFORMATION:

I. Background

Section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) makes certain amendments to the Public and Assisted Housing Drug Elimination Act of 1990, including authorizing HUD to make renewable grants to public housing agencies (PHAs). HUD is to provide preference in funding to these public housing agencies, but this preference does not preclude selection by the Secretary of other meritorious public housing agencies that need funding to address urgent or serious crime problems.

On February 18, 1998 (64 FR 8210), HUD published an Advance Notice of Proposed Rulemaking (ANPR) to solicit comments on possible methods and elements of a need based formula and performance criteria. Further, HUD welcomed any formula methods for consideration that housing agencies or other interested members of the public may have devised. Public comments received in response to this notice were considered in the development of this proposed rule on formula funding for PHDEP, and are discussed in the following section.

II. Public Comment on the ANPR

HUD received 60 comments on the ANPR. The commenters addressed the options for PHDEP funding, and offered several recommendations on how funding may be allocated. This proposed rule takes into consideration the comments received on the ANPR, as discussed below.

Opposition to Formula Funding

Several commenters opposed the change to formula allocation. Their concern was that providing funding to a somewhat greater number of applicants under a formula would reduce the amount that was previously made available to individual applicants who successfully competed for funding.

HUD remains convinced that formula allocation for this program is the better method for allocating PHDEP funds. First, formula allocation of funding for a period of years eliminates the uncertainty of competitive funding and permits the development and implementation of long range plans. Second, as many commenters pointed out, success in funding competitions is often related to the "creative writing" ability of an applicant, an applicant's capacity to hire a professional grants writer, and the subjective preferences of reviewers. These unfavorable

characteristics would be avoided under a formula system of funding. Third, the timing of funding availability under a formula process will be more consistent and regular than under a competitive process. Fourth, a formula will relieve the administrative burden on PHAs and HUD, by eliminating the competitive NOFA process. For these reasons, HUD has determined that a formula approach to PHDEP funding will provide a more timely, predictable and equitable allocation of PHDEP funds.

Criticisms of Funding Formula

Although many of the commenters supported the idea of formula funding, the formula itself was criticized on several points. Among the criticisms was that the formula was difficult to understand; that it used incomplete or invalid data; that the same bedroom mix factor was used more than once; that the weights assigned to the formula's components were not justified, and that the results were not replicable.

This rule proposes to address these criticisms by using a greatly simplified formula for the allocation of PHDEP funding. The amount that will be made available to an applicant qualifying for funding will be based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of \$35 million and a minimum award of \$25,000.

Minimum Amount of Funding

Several commenters addressed the issue of the minimum amount of formula funding. Some favored maintaining the \$50,000 minimum available under the competitive system; some favored the suggested \$25,000 minimum; and others supported a minimum without specifying an amount.

This rule proposes to go forward with the \$25,000 minimum amount of funding. The certainty of funding over five years is proposed to compensate for any problems resulting from the drop in minimum funding. The great majority of beneficiaries of the minimum funding amount is expected to be small applicants that were not previously funded and that would be able to undertake meaningful activities with the minimum amount.

Establish Two Pools of PHDEP Funding

Several commenters suggested that PHDEP funding be divided into two pools, one to be allocated according to a formula, and the other awarded on the basis of a competition.

HUD does not support such a system because it would substantially

compromise the savings in administrative burden to PHAs and HUD that would be available under a formula system.

III. Changes in This Proposed Rule

This rule proposes to amend the Drug Elimination Program (DEP) regulations at 24 CFR part 761 to implement Public Housing Reform Act section 586. In particular, it would amend the way that public housing drug elimination funds are distributed, as explained in the following discussion.

Statutory Changes to DEP Funding and Eligibility

Section 586(e) of the Public Housing Reform Act amends section 5125 of the Anti-Drug Abuse Act of 1988 (ADAA) (the Public and Assisted Housing Drug Elimination Program is authorized under sections 5121 through 5130 of ADAA). Before being amended by section 586(e), section 5125(b) provided that HUD "shall approve applications under this chapter based exclusively on" a list of four factors. This language placed strict limitations on the manner in which HUD could distribute drug elimination funds. Section 586(e) redesignates paragraphs (b) through (d) of section 5125 as paragraphs (c) through (e), respectively, and amends the limiting language in redesignated paragraph (c) to provide that HUD "shall approve applications under subsection (b) that are not subject to a preference under subsection (b)(2)(A) on the basis of thresholds or criteria such as" followed by the same four factors.

Section 586 adds both structure and flexibility to the funding process of the drug elimination program. By replacing the tightly controlling parameters of "based exclusively on" with the expansive "on the basis of thresholds or criteria such as", section 586 provides HUD with greater flexibility in the way DEP funds are distributed. Section 586 also introduces non-competitive, renewable grants as a way of distributing drug elimination funds. The new subsection (b) added to ADAA section 5125 by Public Housing Reform Act section 586 reads as follows:

(b) One-Year Renewable Grants—

(1) In General—An eligible applicant that is a public housing agency may apply for a 1-year grant under this chapter that, subject to the availability of appropriated amounts, shall be renewed annually for a period of not more than 4 additional years, except that such renewal shall be contingent upon the Secretary finding, upon an annual or more frequent review, that the grantee agency is performing under the terms of the grant and applicable laws in a satisfactory manner and meets such other requirements as the

Secretary may prescribe. The Secretary may adjust the amount of any grant received or renewed under this paragraph to take into account increases or decreases in amounts appropriated for these purposes or such other factors as the Secretary determines to be appropriate.

(2) Eligibility and Preference—The Secretary may not provide assistance under this chapter to an applicant that is a public housing agency unless—

(A) the agency will use the grants to continue or expand activities eligible for assistance under this chapter, as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, in which case the Secretary shall provide preference to such applicant; except that preference under this subparagraph shall not preclude selection by the Secretary of other meritorious applications that address urgent or serious crime problems nor be construed to require continuation of activities determined by the Secretary to be unworthy of continuation; or

(B) the agency is in the class established under paragraph (3).

(3) PHA's Having Urgent or Serious Crime Problems—The Secretary shall, by regulations issued after notice and opportunity for public comment, set forth criteria for establishing a class of public housing agencies that have urgent or serious crime problems. The Secretary may reserve a portion of the amount appropriated to carry out this chapter in each fiscal year only for grants for public housing agencies in such class, except that any amounts from such portion reserved that are not obligated to agencies in the class shall be made available only for agencies that are subject to a preference under paragraph (2)(A).

(4) INAPPLICABILITY TO FEDERALLY ASSISTED LOW-INCOME HOUSING—The provisions of this subsection shall not apply to federally assisted low-income housing.

In Senate colloquy before passage of the Public Housing Reform Act, Senator Mack noted that the amendments made to the Public and Assisted Housing Drug Elimination Act of 1990 represent a significant improvement in the program. The Senator stated:

The amendments will provide renewable grants for agencies that meet performance standards established by HUD. In addition, housing authorities with urgent or serious crime needs are protected and will be assured an equitable amount of funding.

* * * [T]he intent of these provisions is to provide more certain funding for agencies with clear needs for funds and to assure that both current funding recipients and other agencies with more urgent or serious crime problems are appropriately assisted by the program. The provisions will also reduce the administrative costs of the current application process which entails a substantial paperwork burden for agencies and HUD. Under the terms of the amendments, HUD can establish a fixed funding mechanism in which the relative needs of housing authorities are addressed with a greater amount of certainty.

(Congressional Record of October 8, 1998, S.11842)

The new language of ADAA section 5125(b), as revised by Public Housing Reform Act section 586(e)(6), addresses the manner in which the categories of eligible DEP applicants (PHAs, RMCs, NAHASDA recipients, consortia, and owners of federally assisted low income housing) are to be funded. PHAs are divided into two categories for funding purposes. The first category consists of PHAs that will "use the grants to continue or expand activities eligible for assistance" under the drug elimination program. The requirement that funds must be used to "continue or expand" activities indicates that PHAs in this category must have previously received DEP funding, or they would not have any activities that could be continued or expanded. HUD has determined that PHAs that successfully competed for PHDEP funding under at least one of the Notices of Funding Availability for Federal Fiscal Years (FFYs) 1996, 1997 and 1998 would have activities to continue or expand and would constitute the first category of PHAs that qualify for funding. Further, revised section 5125(b)(2)(A) states that PHAs in this category are to be provided a preference for funding. How HUD will fund these "preference PHAs" is explained below in the discussion of the funding formula proposed by this rule.

The second category of PHAs that qualify for funding is covered by an exception to the preference. This exception is also found in section 5125(b)(2)(A), in the language which states, "except that preference under this subparagraph shall not preclude selection by the Secretary of other meritorious applications that address urgent or serious crime problems". The funding formula discussed below would define what PHAs fall into this "needs" category and the amount of funding each would qualify to receive.

RMCs and NAHASDA recipients would also qualify for "needs" funding under the exception language of section 5125(b)(2)(A), on the basis of "meritorious applications that address urgent or serious crime problems". The determination of how NAHASDA recipients and RMCs qualify for needs funding and the amounts they would receive are explained under the formula funding discussion, below.

A consortium of eligible applicants would qualify for at least the amount of funding for which its individual members would qualify on a preference or a needs basis. Consortia are more fully discussed under a separate heading in this preamble, below.

HUD is seeking comment in particular on methods and the desirability of providing more of a financial incentive for consortia.

Federally assisted low-income housing is specifically excluded from the provisions of revised section 5125(b) of ADAA, by section 5125(b)(4). Assisted housing DEP funding will continue to be made available on a competitive basis under periodic NOFAs published in the **Federal Register**.

Proposed PHDEP Formula Funding

This rule proposes to distribute all PHDEP funding in a noncompetitive manner through the use of a funding formula. The new language in revised ADAA section 5125(c), discussed above, provides HUD with the flexibility to follow this formula approach. The funding formula process satisfies the section 5125(c) requirement that HUD "approve applications under subsection (b) that are not subject to a preference under subsection (b)(2)(A) on the basis of thresholds or criteria such as" the four listed factors. The manner in which eligible applicants qualify for funding through the formula process is sufficient to satisfy the new, more expansive "such as" requirement which replaced the exclusive reliance upon the four listed ADAA factors.

The application of a funding cut-off point, or threshold, to the ranking of eligible applicants derived through the formula process also satisfies the requirement of the "needs" exception in section 5125(b)(2)(A), that the selection "of other meritorious applications that address urgent or serious crime problems" not be precluded. This rule provides that non-preference PHAs, NAHASDA recipients, and RMCs in the top 50% (the cut-off point or threshold) of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community have needs that qualify for funding. Needs in the top 50% are above average needs, and this broad approach to addressing "urgent or serious crime problems" will assure the broad distribution of PHDEP funding. Needs in the bottom 50% are below average and, therefore, difficult to characterize as "urgent or serious".

The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of the same or a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and

more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used.

The use of a funding cut-off point in the ranking also addresses the preference requirement for previously funded (in FFYs 1996, 1997 or 1998) PHAs. These PHAs will be funded regardless of any ranking, providing them with the preference of assured funding. Renewal of funding under section 5125(b)(1) of ADAA for preference PHAs is contingent only upon "the Secretary finding, upon an annual or more frequent review, that the grantee agency is performing under the terms of the grant and applicable laws in a satisfactory manner and meets such other requirements as the Secretary may prescribe." Of course, as section 5125(b)(2)(A) of ADAA also provides, the preference shall not be "construed to require continuation of activities determined by the Secretary to be unworthy of continuation".

In addition to addressing the preference requirement and determining what "needs" applicants will qualify for funding, a formula would determine the amount each applicant that qualifies for funding would receive. The proposed formula at § 761.13 would distribute PHDEP funding based upon a qualified applicant's (an applicant that qualifies on the basis of preference or need) share of the total number of units of all eligible applicants that qualify for funding, with a maximum award of \$35 million and a minimum award of \$25,000. The amount an applicant that qualifies for funding would receive in any given FFY would vary in proportion to the amounts appropriated annually for the DEP, but would not exceed the established maximum or minimum amounts.

The Department specifically requests comment on whether the proposed formula funding is appropriate for NAHASDA recipients, and will consider implementing alternative methods of funding this category of eligible applicants. Also, please see the discussion under the heading, "Funding of NAHASDA Recipients," below in this preamble.

DEP Application and Plan Requirement

To qualify for funding, an eligible applicant must still meet the ADAA section 5125(a) requirement of submitting a plan for addressing the problem of drug-related or violent crime in and around the recipient's housing. This rule addresses the plan requirement by providing, at § 761.15, that a PHA must include a DEP plan

with its PHA Plan, submitted pursuant to 24 CFR part 903, as a qualification for DEP funding. Similarly, as a qualification for DEP funding, a NAHASDA recipient must include a DEP plan with its Indian Housing Plan (IHP), submitted pursuant to subpart C of 24 CFR part 1000. As for RMCs, a qualification for funding is that an RMC must submit a PHDEP plan to its PHA. The PHA must then submit, with its PHA Plan, the RMC's PHDEP plan. The minimum requirements for the contents of a PHDEP plan are contained in a new § 761.21. The PHDEP plan serves as the application for PHDEP funding, and an otherwise qualified recipient that does not submit a PHDEP plan as required will not be funded.

HUD specifically solicits comments on ways to further streamline the PHDEP plan and performance reporting. HUD is continuing to develop model outcome measures with specific, measurable goals for PHDEP-funded activities, including the overall reduction of violent crime and drug use.

AHDEP applicants will continue to apply in accordance with the requirements of NOFAs published in the **Federal Register**.

Recipients who qualify and receive funding will be reviewed at least annually as grantees to determine if they meet the performance requirements proposed in a new § 761.23. A grantee that fails to satisfy the performance requirements of this section may be subject to the sanctions listed in § 761.30(f)(2).

Consortia

This rule would also establish the requirements for the eligibility and funding of consortia. The rule permits eligible applicants to join together and form a consortium to apply under PHDEP, whether or not each member would individually qualify for funding as a preference PHA or a needs recipient in the top 50% of the formula ranking. To qualify for funding, the consortium members must prepare and submit a consortium DEP plan that meets the requirements of a DEP plan contained in § 761.21. The act of two or more eligible applicants joining together to form a consortium, and identifying related crime problems and eligible activities to address those problems pursuant to a consortium PHDEP plan, qualifies the consortium for PHDEP funding to the extent the individual applicants qualify. The consortium's DEP plan must include a written agreement, signed by an authorized representative of each consortium member, that designates a lead applicant for purposes of grant funding and administration, and as a

central point of contact, and describes the activities and responsibilities that each consortium member is bound to undertake. Each member must submit the consortium plan with its PHA plan or IHP, as appropriate.

HUD will make the determination of the amount of funding the consortium as a whole will receive upon first receipt and favorable review of a consortium's plan. The amount of funding made available to the consortium will be the total of the amounts that each individual member would otherwise qualify to receive, on either a preference or needs basis, under the funding formula. The Department specifically requests comment on methods and the desirability of providing more of a financial incentive for consortia.

Funding of NAHASDA Recipients

An option HUD wishes to present for comment is whether to establish a

separate pool to fund NAHASDA recipients. The lack of full FBI data on Indian Country and the difficulty of formulating appropriate comparable data make it difficult to fund NAHASDA recipients on the same basis as PHAs. Rather than including NAHASDA recipients in the same funding pool with PHAs, HUD would make separate DEP funding available for NAHASDA recipients. The amount of funding available would be set at a level that is significantly greater percentage of the total amounts made available than the average of the amounts received by Indian tribes, IHAs, or tribally designated housing entities (TDHEs) in FFYs 1996, 1997 and 1998. The increase under such a formulation would be in keeping with the overall increase in HUD funding that took place when Native American housing assistance was consolidated under NAHASDA.

HUD welcomes suggestions on the basis on which additional NAHASDA

recipients may be permitted to qualify, short of requiring the submission and verification of extensive data, because it is HUD's goal to streamline the funding process for all categories of PHDEP applicants.

IV. Findings and Certifications

Paperwork Reduction Act Statement

The proposed information collection requirements contained in this rule, and the additional PHDEP requirements at 24 CFR part 761 not affected by this rule, including the changeover in the reporting requirements under § 761.35 from a hardcopy format to an electronic format, have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Annual freq. of requirement	Est. avg. time for requirement (hours)	Est. annual burden (hrs.)
761.17	600	1	16	9,600
761.21	1100	1	25	27,500
761.23	1100	1	8	8,800
761.25	7000	1	1	7,000
761.30	1100	1	16	17,600
761.35	1100	7	22	169,400
Total Reporting and Recordkeeping Burden (Hours) .....	.....	.....	.....	239,900

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information

technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-4451) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and

Mildred Hamman, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 4244, Washington, DC 20410.

Additional information on these information collection requirements may be obtained from the Reports Liaison Officer or from the HUD web site at <http://www.hud.gov/pih/programs/ph/de/cscd.html>.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this advanced notice of proposed rulemaking (ANPR) under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this ANPR subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban

Development, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule begins the rulemaking process to implement changes for the distribution of Public Housing Drug Elimination Program funds under the Quality Housing and Work Responsibility Act of 1998. A significant economic impact on a substantial number of small entities is not expected because under this proposal, all small entities previously funded will continue to be funded at comparable levels. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(2) of the HUD regulations, this rule amends an existing document, the regulations at 24 CFR part 761, which as a whole would not fall within an exclusion, but the amendment by itself would do so. Therefore, the actions proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and further review under the National Environmental Policy Act is not necessary and no FONSI is needed.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule 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. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

List of Subjects in 24 CFR Part 761

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Public housing, Reporting and recordkeeping requirements.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the Public Housing Drug Elimination Program is 14.854.

Accordingly, for the reasons stated in the preamble, part 761 of title 24 of the Code of Federal Regulations is amended as follows:

PART 761—DRUG ELIMINATION PROGRAMS

1. The authority citation for 24 CFR part 761 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

2. In part 761, all references to “drug-related crime” are revised to read “drug-related and violent crime” and all references to “Indian housing authorities (IHAs)” are revised to read “NAHASDA recipients”.

3. In § 761.1, the introductory text is revised to read as follows:

§ 761.1 Purpose and scope.

This part 761 contains the regulatory requirements for the Assisted Housing Drug Elimination Program (AHDEP) and the Public Housing Drug Elimination Program (PHDEP). The purposes of these programs are to:

* * * * *

4. Section 761.5, is revised to read as follows:

§ 761.5 Public housing; encouragement of resident participation.

For the purposes of the Public Housing Drug Elimination Program, the elimination of drug-related and violent crime within public housing developments requires the active involvement and commitment of public housing residents and their organizations. To enhance the ability of PHAs to combat drug-related and violent crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR part 964.

5. In § 761.10, the introductory text is revised, the definition of *Recipient of assistance under the Native American*

Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient) is added in alphabetical order, and the definition of *Resident Management Corporation (RMC)* is revised, to read as follows:

§ 761.10 Definitions.

The definitions *Department, HUD, and Public Housing Agency (PHA)* are defined in 24 CFR part 5.

* * * * *

Recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient) shall have the same meaning as recipient provided in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

* * * * *

Resident Management Corporation (RMC), for purposes of the Public Housing Program, means the entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964 in accordance with the requirements of that part.

* * * * *

6. The heading of subpart B is revised to read as follows:

Subpart B—Grant Funding

7. A new § 761.13 is added to read as follows:

§ 761.13 Amount of funding.

(a) *PHDEP formula funding.* (1) *Funding share formula.* The amount of funding made available each FFY to an applicant that qualifies for funding in accordance with § 761.15(a) is based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of \$35 million and a minimum award of \$25,000.

(2) *Consortium funding.* The amount of funding made available to a consortium will be the total of the amounts that each individual member would otherwise qualify to receive under the PHDEP funding formula in accordance with paragraph (a)(1) of this section.

(3) *Adjustments to funding.* The amount of funding made available each FFY to an applicant in accordance with paragraphs (a)(1) and (a)(2) of this section may be adjusted as follows:

(i) An applicant must submit a PHDEP plan that meets the requirements of § 761.21, as required by § 761.15(a)(5), each FFY year to receive that FFY's funding. An applicant that does not submit a PHDEP plan for a FFY as

required will not receive that FFY's funding.

(ii) Ineligible activities, described at § 761.17(b), are not eligible for funding. Activities proposed for funding in an applicant's PHDEP plan that are determined to be ineligible will not be funded, and the applicant's funding for that FFY may be reduced accordingly.

(iii) In accordance with § 761.15(a)(6), an applicant that does not meet the performance requirements of § 761.23 may not be funded, in whole or in part.

(iv) Any amounts that become available because of adjustments to an applicant's funding will be distributed to every other applicant that qualifies for funding in accordance with paragraphs (a)(1) and (a)(2) of this section.

(b) *AHDEP funding.* Information concerning funding made available under AHDEP for a given FFY will be contained in Notices of Funding Availability (NOFAs) published in the **Federal Register**.

8. Section 761.15 is revised to read as follows:

§ 761.15 Qualifying for funding.

(a) *Qualifications for PHDEP funding.*
(1) *Eligible applicants.* The following are eligible applicants for PHDEP funding:

- (i) A PHA;
- (ii) A NAHASDA recipient;
- (iii) An RMC; and
- (iv) A consortium of PHAs.

(2) *Preference PHAs.* A PHA that successfully competed for PHDEP funding under at least one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998 qualifies to receive PHDEP funding.

(3) *Needs qualification for funding.* A PHA that does not qualify to receive PHDEP funding under paragraph (a)(2) of this section, a NAHASDA recipient, or an RMC must be in the top 50% of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community, as computed for each Federal Fiscal Year (FFY) to qualify for funding. The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used.

(4) *Consortium of eligible applicants.* Eligible applicants may join together and form a consortium to apply for funding, whether or not each member would individually qualify for PHDEP funding under paragraphs (a)(2) or (a)(3) of this section. The act of two or more eligible applicants joining together to form a consortium, and identifying related crime problems and eligible activities to address those problems pursuant to a consortium PHDEP plan, qualifies the consortium for PHDEP funding of an amount as determined under § 761.13(a)(2).

(5) *PHDEP plan requirement.* (i) *PHAs.* To receive PHDEP funding, a PHA that qualifies to receive PHDEP funding must include a PHDEP plan that meets the requirements of § 761.21 with its PHA Plan submitted pursuant to 24 CFR part 903.

(ii) *NAHASDA recipients.* To receive PHDEP funding, a NAHASDA recipient that qualifies to receive PHDEP funding must include a PHDEP plan that meets the requirements of § 761.21 with its Indian Housing Plan (IHP) submitted pursuant to subpart C of 24 CFR part 1000.

(iii) *RMCs.* To receive PHDEP funding, an RMC that qualifies to receive PHDEP funding must submit a PHDEP plan that meets the requirements of § 761.21 to its PHA. That PHA may submit, with its PHA Plan submitted pursuant to 24 CFR part 903, the RMC's PHDEP plan.

(iv) *Consortia.* To receive PHDEP funding, the consortium members must prepare and submit a consortium PHDEP plan that meets the requirements of § 761.21, including the additional requirements that apply to consortia. Each member must submit the consortium plan with its PHA plan, submitted pursuant to 24 CFR part 903, or IHP, submitted pursuant to subpart C of 24 CFR part 1000, as appropriate.

(6) An otherwise qualified recipient PHA, NAHASDA recipient, RMC or consortium may not be funded if HUD determines, on a case-by-case basis, that it does not meet the performance requirements of § 761.23.

(b) *Qualifications for AHDEP funding.* Under AHDEP, eligible applicants are owners of federally assisted low-income housing, as the term *Federally assisted low-income housing* is defined in § 761.10. Notices of Funding Availability (NOFAs) published in the **Federal Register** will contain specific information concerning funding requirements and eligible and ineligible applicants and activities.

9. A new § 761.17 is added to read as follows:

§ 761.17 Eligible and ineligible activities for funding.

(a) *Eligible activities.* One or more of the eligible activities described in 42 U.S.C. 11903 and in this § 761.17(a) are eligible for funding under PHDEP or AHDEP, as further explained or limited in paragraph (b) of this section and, for AHDEP, in separate annual Notices of Funding Availability (NOFAs). All personnel funded by these programs in accordance with an eligible activity must meet, and demonstrate compliance with, all relevant Federal, State, tribal, or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(1) *Employment of security personnel.* as provided in 42 U.S.C. 11903(a)(1), with the following additional requirements:

(i) *Security guard personnel.* (A) Contract security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis.

(B) The applicant, the cooperating local law enforcement agency, and the provider (contractor) of the security personnel are required, as a part of the security personnel contract, to enter into and execute a written agreement that describes the following:

(1) The activities to be performed by the security personnel, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(2) The types of activities that the security personnel are expressly prohibited from undertaking.

(ii) *Employment of HA police.* (A) If additional HA police are to be employed for a service that is also provided by a local law enforcement agency, the applicant must provide a cost analysis that demonstrates the employment of HA police is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional HA police services to be funded under this program must be over and above those that the existing HA police, if any, provides, and the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An applicant seeking funding for this activity must first establish a baseline by describing the current level of services provided by both the local law enforcement agency and the HA police, if any (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments

proposed for funding), and then demonstrate that the funded activity will represent an increase over this baseline.

(C) The applicant and the cooperating local law enforcement agency are required to enter into and execute a written agreement that describes the following:

(1) The activities to be performed by the HA police, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(2) The types of activities that the HA police are expressly prohibited from undertaking.

(2) *Reimbursement of local law enforcement agencies for additional security and protective services*, as provided in 42 U.S.C. 11903(a)(2), with the following additional requirements:

(i) Additional security and protective services to be funded must be over and above those that the tribal, State, or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An application seeking funding for this activity must first establish a baseline by describing the current level of services (in terms of the kinds of services provided, the number of officers and equipment, and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate that the funded activity will represent an increase over this baseline.

(ii) Communications and security equipment to improve the collection, analysis, and use of information about drug-related or violent criminal activities in a public housing community may be eligible items if used exclusively in connection with the establishment of a law enforcement substation on the funded premises or scattered site developments of the applicant. Funds for activities under this section may not be drawn until the grantee has executed a contract for the additional law enforcement services.

(3) *Physical improvements to enhance security*, as provided in 42 U.S.C. 11903(a)(3). For purposes of PHDEP, the following provisions in paragraphs (a)(3)(i) through (a)(3)(iv) of this section apply:

(i) An activity that is funded under any other HUD program shall not also be funded by this program.

(ii) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(iii) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(iv) Funding is not permitted for the acquisition of real property.

(4) *Employment of investigating individuals*, as provided in 42 U.S.C. 11903(a)(4). For purposes of PHDEP, the following provisions in paragraphs (a)(4)(i) and (a)(4)(ii) of this section apply:

(i) If one or more investigators are to be employed for a service that is also provided by a local law enforcement agency, the applicant must provide a cost analysis that demonstrates the employment of investigators is more cost efficient than obtaining the service from the local law enforcement agency.

(ii) The applicant, the cooperating local law enforcement agency, and the investigator(s) are required, before any investigators are employed, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the investigators, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(B) The types of activities that the investigators are expressly prohibited from undertaking.

(5) *Voluntary tenant patrols*, as provided in 42 U.S.C. 11903(a)(5). For purposes of PHDEP, the following provisions in paragraphs (a)(5)(i) through (a)(5)(iv) of this section apply:

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol. The cost of this insurance will be considered an eligible program expense.

(ii) The applicant, the cooperating local law enforcement agency, and the members of the tenant patrol are required, before putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the tenant patrol, the patrol's scope of authority, and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks,

clubs, handcuffs, or mace in the course of their duties under this program;

(C) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the tenant patrol into effect).

(iii) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a HA's or RMC's liability insurance.

(iv) Grant funds may not be used for any type of financial compensation for voluntary tenant patrol participants. However, the use of program funds for a grant coordinator for volunteer tenant foot patrols is permitted.

(6) *Drug prevention, intervention, and treatment programs*, as provided in 42 U.S.C. 11903(a)(6).

(7) *Funding resident management corporations (RMCs), resident councils (RCs), and resident organizations (ROs)*. For purposes of the Public Housing Program, funding may be provided for PHAs that receive grants to contract with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents, as provided in 42 U.S.C. 11903(a)(7).

(8) *Youth sports*. Sports programs and sports activities that serve primarily youths from public or other federally assisted low-income housing projects and are operated in conjunction with, or in furtherance of, an organized program or plan designed to reduce or eliminate drugs and drug-related problems in and around such projects, as provided in 42 U.S.C. 11903(a)(8).

(9) *Eliminating drug-related and violent crime in PHA-owned housing*, under the Public Housing Program, as provided in 42 U.S.C. 11903(b).

(b) *Ineligible activities*. For purposes of PHDEP, funding is not permitted:

(1) For activities not included under paragraph (a) of this section;

(2) For costs incurred before the effective date of the grant agreement;

(3) For the costs related to screening or evicting residents for drug-related crime. However, investigators funded under this program may participate in judicial and administrative proceedings;

(4) For previously funded activities determined by HUD on a case-by-case basis to be unworthy of continuation.

10. Section 761.20 is revised to read as follows:

§ 761.20 Selection requirements.

(a) *PHDEP selection*. Every PHA, NAHASDA recipient, RMC and

consortium that meets the requirements of § 761.15 in a FFY will be selected for funding in that FFY and, subject to meeting the performance requirements of § 761.23, for four additional FFYs.

(b) *AHDEP selection.* HUD will publish specific Notices of Funding Availability (NOFAs) in the **Federal Register** to inform the public of the availability of AHDEP grant amounts under this part 761. The NOFAs will provide specific guidance with respect to the grant process, including identifying the eligible applicants; deadlines for the submission of grant applications; the limits (if any) on maximum grant amounts; the information that must be submitted to permit HUD to score each of the selection criteria; the maximum number of points to be awarded for each selection criterion; the contents of the plan for addressing drug-related and violent crime that must be included with the application; the listing of any certifications and assurances that must be submitted with the application; and the process for ranking and selecting applicants. NOFAs will also include any additional information, factors, and requirements that HUD has determined to be necessary and appropriate to provide for the implementation and administration of AHDEP under this part 761.

10. A new § 761.21 is added to read as follows:

§ 761.21 Plan requirement.

(a) *General requirement.* To receive funding under this part, each PHDEP qualified recipient or AHDEP applicant must submit to HUD a plan for addressing the problem of drug-related and violent crime in and around the housing covered by the plan. If the plan covers more than one development, it does not have to address each development separately if the same activities will apply to each development. The plan must address each development separately only where program activities will differ from one development to another. The plan must include a description of the planned activity or activities, a description of the role of plan partners and their contributions to carrying out the plan, a budget and timetable for implementation of the activities, and the funding source for each activity, identifying in particular all activities to be funded under this part. In addition, the plan must set measurable performance goals and interim milestones for the PHDEP-supported activities and describe the system for monitoring and evaluating these activities. Measurable goals must be

established for each category of funded activities, including drug prevention, drug intervention, drug treatment, tenant patrols, and physical improvements. The plan under this section serves as the application for PHDEP funding, and an otherwise qualified recipient that does not submit a PHDEP plan as required will not be funded. For AHDEP funding, NOFAs published in the **Federal Register** may provide additional information on plan requirements for purposes of this section. Plans must meet the requirements of this section before grant funds are distributed. HUD will review the submitted plans for a determination of whether they meet the requirements of this section.

(b) *Additional requirements for consortia.* In addition to meeting the requirements of paragraph (a) of this section, to receive funding under this part, a consortium's plan must include a written agreement, signed by an authorized representative of each consortium member, that designates a lead applicant for purposes of grant funding and administration, and as a central point of contact, and describes the activities and responsibilities that each consortium member is bound to undertake.

11. A new § 761.23 is added to read as follows:

§ 761.23 Grantee performance requirements.

(a) *Basic grantee requirements.* (1) *Compliance with civil rights requirements.* Grantees must be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975 and the Indian Civil Rights Act.

(2) *Adherence to the grant agreement.* The grant agreement between HUD and the grantee incorporates the grantee's application and plan for the implementation of grant-funded activities.

(3) *Compliance with "baseline" funding requirement.* Grantees may not use grant funds to reimburse law enforcement agencies for "baseline" community safety services. Grantees must adhere to 24 CFR 761.17(a)(2)(i), reimbursement of local law enforcement agencies for additional security and protective services. In addition, grantees must provide to HUD a description of the baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(4) *Partnerships.* Grantees must provide HUD with evidence of

partnerships—in particular, firm commitments by organizations providing funding, services, or other in-kind resources for PHDEP-funded activities (e.g., memorandum of agreement, letter of firm commitment). The partnership agreement must cover the applicable funding period.

(5) *MTCS reporting.* Grantees must maintain a level of compliance with MTCS reporting requirements that is satisfactory to HUD.

(b) *Planning and reporting requirements.* (1) *Planning consistency.* PHDEP funded activities must be consistent with the most recent HUD-approved PHA Plan or Indian Housing Plan, as appropriate. AHDEP funded activities must be consistent with the most recent Consolidated Plan under 24 CFR part 91 for the community.

(2) *Demonstration of coordination with other law enforcement efforts.* Each grantee must demonstrate to HUD that it consulted with local law enforcement authorities and other local entities in the preparation of its plan for addressing the problem of drug-related and violent crime under § 761.21.

Furthermore, a grantee must demonstrate to HUD that its grant-funded activities are coordinated with other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program operating in the community, if applicable.

(3) *Compliance with reporting requirements.* Grantees must provide periodic reports consistent with this part at such times and in such form as is required by HUD.

(4) *Reporting on drug-related and violent crime.* Grantees must report any change or lack of change in crime statistics—especially drug-related crime and violent crime—or other relevant indicators drawn from the applicant's or grantee's evaluation and monitoring plan, IHP or PHA Plan. The grantee must also indicate, if applicable, how it is adequately addressing any recommendations emanating from other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program, operating in the community and is taking appropriate actions, in view of available resources, such as post-enforcement measures, to take full advantage of these programs.

(c) *Performance requirements.* (1) *Timely obligation and expenditure of grant funds.* The HA must obligate and expend funds in compliance with all funding notifications, regulations, notices, and grant agreements. In

addition, the HA must obligate at least 50 percent of funds under a particular grant within 12 months of the execution of the grant agreement, and must expend at least 25 percent of funds under a particular grant within 12 months of the execution of the grant agreement.

(2) *Operational monitoring and evaluation system.* The grantee must demonstrate that it has a fully operational system for monitoring and evaluating its grant-funded activities. A monitoring and evaluation system must collect quantitative evidence of the number of persons and units served, including youth served as a separate category, types of services provided, and the impact of such services on the persons served. Also, the monitoring and evaluation system must collect quantitative and qualitative evidence of the impact of grant-funded activities on the public housing or other housing, the community and the surrounding neighborhood.

(3) *Reduction of violent crime and drug use.* The grantee must demonstrate that it has established, and is attaining,

measurable goals for PHDEP-funded activities with respect to the overall reduction of violent crime and drug use.

(d) *Other requirements.* HUD reserves the right to add additional performance factors consistent with this rule and other related statutes and regulations on a case-by-case basis.

(e) *Sanctions.* A grantee that fails to satisfy the performance requirements of this section may be subject to the sanctions listed in § 761.30(f)(2).

12. In § 761.40, paragraphs (e), (f) and (g) are revised to read as follows:

§ 761.40 Other Federal requirements.

* * * * *

(e) *Indian preference.* For purposes of PHDEP, NAHASDA recipients are subject to the Indian Civil Rights Act (24 U.S.C. 1301), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). These provisions require that, to the greatest extent feasible, preference and opportunities for training and employment be given to Indians, and that preference in the award of subcontracts and subgrants be given to

Indian Organizations and Indian Owned Economic Enterprises.

(f) *Intergovernmental Review.* The requirements of Executive Order 12372 (3 CFR, 1982 Comp., p. 197) and the regulations issued under the Order in 24 CFR part 52, to the extent provided by **Federal Register** notice in accordance with 24 CFR 52.3, apply to these programs.

(g) *Environmental review.* Grants under this part 761 are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), in accordance with 24 CFR 50.19(b)(4), (b)(12), or (b)(13). If grant funds will be used to cover the cost of any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant awards.

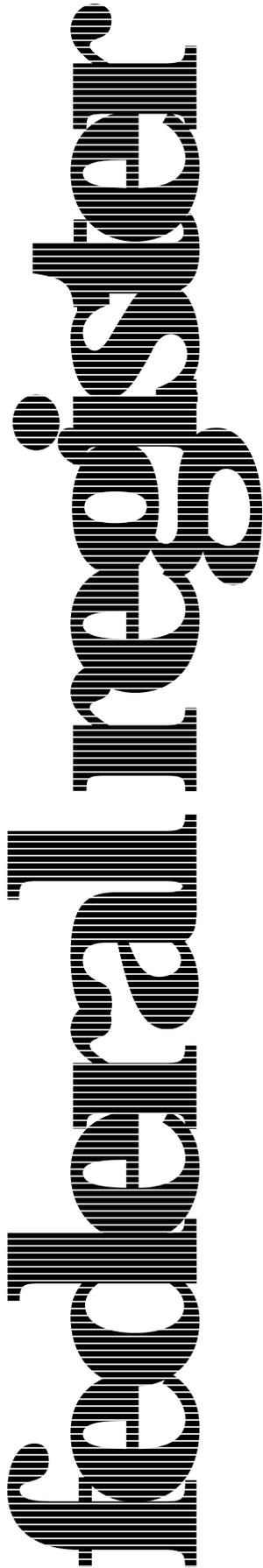
Dated: April 21, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99-11918 Filed 5-11-99; 8:45 am]

BILLING CODE 4210-33-P



Wednesday
May 12, 1999

Part VI

**Department of
Housing and Urban
Development**

**Withdrawing and Reissuing FY 1999
Notice of Funding Availability for the
Public Housing Drug Elimination
Program; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4451-N-03]

**Notice Withdrawing and Reissuing FY
1999 Notice of Funding Availability for
the Public Housing Drug Elimination
Program**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice Withdrawing and Reissuing FY 1999 Notice of Funding Availability (NOFA) for the FY 1999 Public Housing Drug Elimination Program (PHDEP).

SUMMARY: The Department of Housing and Urban Development (HUD) is withdrawing the FY 1999 NOFA for the Public Housing Drug Elimination Program (PHDEP) published in the **Federal Register** of February 26, 1999 (64 FR 9745) and reissuing a NOFA that requests less information. Elsewhere in this issue of the **Federal Register** is HUD's proposed rule to implement the distribution of PHDEP funding under a non-competitive formula. The information requested by this notice will be used by HUD whether or not funds are distributed competitively, and will reduce the current reporting burden on applicants. This action is intended to prevent an interruption in the funding process while issues related to the proposed rule are resolved.

DATES: Requested information should be submitted by June 16, 1999.

ADDRESSES: Submit an original and two copies of the information requested to the local Field Office with delegated public housing responsibilities:

Attention: Director, Office of Public Housing, or, in the case of the Tribes or Tribally Designated Housing Entities (TDHEs), to the local HUD Administrator, Area Office of Native American Programs (AONAP), as appropriate. For a listing of Field Offices, please see the application kit, or the Appendix published in the February 26, 1999 SuperNOFA at 64 FR 9767.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Program Analyst, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-1197 x.4237; or Tracy C. Outlaw, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675-1600 (these are not toll-free numbers). Hearing or

speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105-276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) made important changes to PHDEP, including authorizing the Secretary to make renewable grants. An Advance Notice of Proposed Rulemaking published in the **Federal Register** of February 18, 1999 (64 FR 8210) announced HUD's intention to develop, through proposed rulemaking, a formula allocation funding for PHDEP. Elsewhere in this issue of the **Federal Register** HUD has published a proposed rule on PHDEP formula allocation.

Depending on the outcome of the proposed rulemaking on a formula allocation of PHDEP funds, HUD may award FY 1999 funds by a noncompetitive formula. However, at this time, in order to reduce the reporting burden required of applicants, expedite processing of FY 1999 funding awards and avoid an interruption in the funding process, HUD is withdrawing the FY 1999 Notice of Funding Availability (NOFA) for the FY 1999 Public Housing Drug Elimination Program (PHDEP). Instead, HUD is requesting the information described below to be submitted by June 16, 1999. The information solicited under this Notice will not be a part of the rulemaking record.

Withdrawal of FY 1999 Notice of Funding Availability (NOFA) for the HUD Public and Indian Housing Drug Elimination Program

Accordingly, the FY 1999 Public and Indian Housing Drug Elimination Program NOFA, published in the **Federal Register** of February 26, 1999 (64 FR 9745), is hereby withdrawn.

Reissuance of FY 1999 Notice of Funding Availability (NOFA) for the HUD Public and Indian Housing Drug Elimination Program

Accordingly, the FY 1999 Public and Indian Housing Drug Elimination Program NOFA is hereby reissued as follows:

I. Program Overview

Purpose of the Program. To provide grants to eliminate drugs and drug-related crime in public housing and Indian communities.

Available Funds. Approximately \$242,750,000 is available during FY 99 for PHDEP grants.

Eligible Applicants. Public Housing Authorities (PHAs), Tribes, or Tribally Designated Housing Entities (TDHEs) on behalf of the Tribe.

Application Deadline. June 16, 1999.
Match. None

II. Application Due Date, Application Kits, Address for Submitting Applications, Further Information and Technical Assistance

Application Due Date. Applications (an original and two copies) are due on or before 6:00 pm local time on June 16, 1999 at the address shown below.

For Application Kits. To receive a copy of the Public Housing Drug Elimination Program (PHDEP) application kit please call the SuperNOFA Information Center at 1-800-HUD-8929. Persons with hearing or speech impairments may call the Center's TTY number at 1-800-483-2209. When requesting an application kit, please refer to the Public Housing Drug Elimination Program (PHDEP). Please provide your name, address (including zip code, and telephone number (including area code). Although this Notice is the governing document for FY 1999 PHDEP funding, the information in the application kit is helpful to the extent the application kit is consistent with this Notice, and the blank forms contained in Section I of the application kit, beginning on page I-19, should still be used.

Address For Submitting Applications. Submit an original and two identical copies of the application by the application due date at the local Field Office with delegated public housing responsibilities: Attention: Director, Office of Public Housing, or, in the case of the Tribes or TDHEs, to the local HUD Administrator, Area Office of Native American Programs (AONAP), as appropriate. For a listing of Field Offices, please see the application kit, or the Appendix published in the February 26, 1999 SuperNOFA at 64 FR 9767.

For Further Information and Technical Assistance. Please call the local HUD Field Office HUB with delegated housing responsibilities for your housing agency, the Area Office of Native American Programs (AONAPs) with jurisdiction over your Tribe or Tribally Designated Housing Entity (TDHE), HUD's Drug Information and Strategy Clearinghouse (DISC) at 1-800-952-2232; or Bertha M. Jones, Program Analyst, in the Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451

Seventh Street, SW, Room 4206, Washington, DC 20410, telephone (202) 708-1197, extension 4237; or Tracy C. Outlaw, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675-1600. (With the exception of the "1-800" telephone number, these are not toll-free numbers.)

III. Submission Requirements

In order to expedite its process for awarding FY 1999 funding, HUD is requesting that applicants submit the following information. The blank forms contained in Section I of the application kit, beginning on page I-19, should still be used. Applicants who do not submit the information in response to this notice will not be disadvantaged in the funding process for FY 1999. HUD will publish another notice this Fiscal Year with additional information on the funding process.

(A) The locations and unit counts of the developments that are targeted for FY 1999 PHDEP assistance.

(B) A plan for addressing the problem of drug-related crime and the problems associated with drug-related crime in the developments targeted for funding, that describes each of the activities to be implemented at each of the targeted developments and the particular problem that each activity is intended to address (see sections IV.(D) and (E) of this Notice, below, for a description of eligible and ineligible activities). The applicant should describe how each activity fits in with the goals and objectives that the applicant could achieve over a five-year period. The applicant should also set goals for each year for each activity. There should also be a description of the quantitative and/or qualitative measures that the applicant will use to assess its progress toward achieving its goals for each activity. Where quantitative measures will be used, the applicant must provide baseline data that describes current conditions and that will be compared to conditions over the grant term as a measure of the applicant's performance. Where only qualitative measures are used, the applicant must describe why no quantitative data could be applied to the activity in question. See also specific plan requirements in section IV of this Notice, below, regarding Housing Authority Police Departments.

(C) A budget for each fiscal year of the grant period (may not exceed 24 months) which estimates amounts to be expended for the activities set forth in their submission. The budget shall assume funding of the greater of

\$25,000, the minimum award amount, or \$220 per unit for the applicant's total unit count computed in accordance with section IV.(H) of this Notice, below, with a maximum award amount of \$35 million.

(D) A timetable that shows the start and end date for each activity with intermediate achievement milestones for each activity.

(E) A description of the role of each partner, if any, who will be working with the applicant during the grant period to implement the activities identified in the submission, including a description of subgrantees, if applicable. The description must include the names of subgrantees, as well as the relative roles and contributions of each subgrantee in implementing the PHDEP grant activities.

(F) A summary of the proposed program activities in five (5) sentences or less.

IV. Program Requirements

(A) *General Requirements.* Sections II and VII of the General Section of the SuperNOFA published on February 26, 1999 (64 FR 9618), continue to apply to this Notice.

(B) *Program Description.* Funds are available for Public Housing Authorities (PHAs), Tribes or Tribally Designated Housing Entities (TDHEs) to develop and finance drug and drug-related crime elimination efforts in their developments. You may use funds for enhancing security within your developments, making physical improvements to enhance security; and/or developing and implementing prevention, intervention and treatment programs to stop drug use in public and Indian housing communities.

In FY 1999, HUD is requiring all applicants to establish measurable baseline information and realistic goals for drug-related crime in Public Housing and for all major PHDEP activities being proposed. In addition, HUD is developing a formula based system for use in awarding PHDEP grants.

(C) *Eligible Applicants.* Eligible applicants include PHAs, Tribes or TDHEs. (A Tribe can apply either in its own name or through its TDHE. A TDHE cannot apply on behalf of a Tribe that is applying on its own behalf.) Resident Management Corporations (RMCs); and incorporated Resident Councils (RCs) are eligible for funding from PHAs as sub-grantees. RMCs and ROs that were operating pursuant to 24 CFR part 950 are eligible for funding from Tribes or TDHEs as subgrantees to develop security and substance abuse prevention programs. Eligible applicants

with substantial drug-related crime in and around their premises are strongly encouraged to apply.

(D) *Eligible/Ineligible Activities.* Under statute, PHDEP grants may be used for seven types of activities including: Physical improvement specifically designed to enhance security; Programs designed to reduce use of drugs in and around public or Indian housing developments including drug-abuse prevention, intervention, referral, and treatment; Funding for non-profit public housing resident management corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs) to develop security and drug abuse prevention programs involving site residents; Employment of security personnel; Employment of personnel to investigate and provide evidence in administrative or judicial proceeding; Reimbursement of local law enforcement agencies for additional security and protective services; and Training, communications equipment, and related equipment for use by voluntary tenant patrols. Applicants may choose eligible activities that best fit their communities' needs.

Following is a discussion by activity type of: what is fundable; what is not fundable; and specific requirements.

(1) *Physical Improvements to Enhance Security.* (a) Physical improvements specifically designed to enhance security may include: installing barriers, speed bumps, lighting systems, fences, surveillance equipment (e.g., Closed Circuit Television (CCTV), computers and software, fax machines, cameras, monitors, and supporting equipment), bolts, locks, and landscaping or reconfiguring common areas to discourage drug-related crime.

(i) All physical improvements must be accessible to persons with disabilities. For example, locks or buzzer systems that are not accessible to persons with restricted or impaired strength, mobility, or hearing may not be funded by PHDEP. Defensible space improvements must comply with civil rights requirements and cannot exclude or segregate people because of their race, color, or national origin from benefits, services, or other terms or conditions of housing. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(ii) Funding is permitted for the purchase or lease of house trailers of any type that are not designated as a building if they are used for eligible community policing, educational, employment, and youth activities. A justification of purchase versus lease

must be supported by a cost-benefit analysis prior to purchase or lease.

(b) *Ineligible Improvements.* The following are ineligible for funding:

(i) Physical improvements that involve demolishing any units in a development;

(ii) Physical improvements that would displace persons;

(iii) Acquiring real property.

(2) *Programs to Reduce Drug Use (Prevention, Intervention, Treatment, Structured Aftercare and Support Systems).* (a) *General Requirements and Strategies.* Any substance abuse prevention, intervention, treatment, and aftercare program should use a "continuum of care" approach. A "continuum of care" approach includes not just treating the addiction or dependency but providing aftercare, mentoring, and support services such as day care, family counseling, education, training, employment development opportunities, and other activities.

You should develop a substance abuse/sobriety (remission)/treatment (dependency) strategy to adequately plan your substance abuse prevention, intervention, treatment, and structured aftercare efforts. In many cases, you may want to include education, training, and employment opportunities for residents; and support Welfare to Work initiatives. When undertaking these activities, you should be leveraging your PHDEP resources with other Federal, State, local and Tribal resources. For example, your program may include providing space and other infrastructure for these efforts with several public agencies providing staff and other resources at limited or no cost. Your strategy must incorporate existing community resources and you must document how they will be used in your program. The strategy should also document how community resources will be provided on-site, or how participants will be referred and transported to treatment programs that are not on-site.

A community-based approach also requires you to develop a culturally appropriate strategy. Curricula, activities, and staff should address the cultural issues of the local community, which requires your application to indicate your familiarity and facility with the language and cultural norms of the community. As applicable, your strategy should address cultural competencies associated with Hispanic, African-American, Asian, Native American or other racial or ethnic communities.

Your activities should focus resources directly to housing authority residents and families.

For all activities involving education, training and employment, you should document efforts to coordinate with Federal, Tribal, State and local employment training and development services, "welfare to work" efforts, or other new "welfare reform" efforts.

The current Diagnostic and Statistical Manual (DSM) of Mental Disorders of the American Psychiatric Association dated May 1994, contains information on substance abuse, dependency and structured aftercare. For more information about this reference, contact: APPI, 1400 K. Street, NW, Suite 1100, Washington, DC 20005 on 1(800) 368-5777 or World Wide Web site at <http://www.appi.org>.

Eligible activities may include:

(i) Substance abuse prevention, intervention, and referral programs;

(ii) Programs of local social, faith-based and/or other organizations that provide treatment services (contractual or otherwise) for dependency/remission; and

(iii) Structured aftercare/support system programs.

(b) *Activities must be "in and around".* PHDEP funding is permitted for programs that reduce/eliminate drug-related crime "in and around" the premises of the housing authority/development(s). HUD has defined the term "in and around" to mean within, or adjacent to, the physical boundaries of a public or Indian housing development. This ensures that program funds and activities are targeted to benefit, as directly as possible, public and Indian housing developments and their residents.

(c) *Eligible cost.* (i) Funding is permitted for reasonable, necessary, and justified purchasing or leasing (whichever is documented as the most cost effective) of vehicles for transporting adult and youth residents for education, job training, and off-site treatment programs directly related to reducing drugs and drug-related crime. The cost reasonableness can be determined by a comparison of the number of participants in and anticipated costs of these programs compared to the purchase or lease cost of the vehicles. If these costs are included in your program, your plan must include a description of why the expenses are necessary. The primary use of such vehicles must correspond with their intended purposes under your grant.

(ii) Funding is permitted for reasonable, necessary and justified program costs, such as meals and beverages incurred only for training, education and employment activities, and youth services directly related to

reducing drugs and drug-related crime. Refer to Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments.

(d) *Prevention.* Prevention programs should provide directly, or otherwise make available, services designed to distribute substance/drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the housing development or the community for housing authority families.

Prevention programs should provide an effective prevention approach for residents that address the individual resident and his or her relationship to family, peers, and the community. Your prevention programs activities should identify and change the causal factors present in housing authorities that lead to drug-related crime thereby lowering the risk of drug usage. Components of an effective approach may include, but are not limited to, wellness and educational training; substance abuse sobriety, refusal and restraint skills training programs; or drug, substance abuse/dependency and family counseling. These may already be available in the community of your housing developments and should be included to the maximum extent possible in your proposed program of activities.

The following eligible activities under a prevention program are discussed in more detail below: educational opportunities; family and other support services; youth services; and economic and educational opportunities for resident adult and youth activities.

(i) *Educational Opportunities.* The causes and effects of illegal drug/substance abuse must be taught in a culturally appropriate and structured setting. You may contract (in accordance with 24 CFR 85.36) to provide such knowledge and skills through training programs. The professionals contracted to provide these services are required to base their services on your needs assessment and program plan. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(ii) *Family and Other Support Services.* "Supportive services" are services that allow housing authority families to have access to prevention, educational and employment opportunities. Supportive services may include: child care; employment training; computer skills training; remedial education; substance abuse

counseling; help in getting a high school equivalency certificate; and other services to reduce drug-related crime.

(iii) *Youth Services.* "Educating and enabling America's youth to reject illegal drugs" is Goal #1 of the Office of National Drug Control Policy (ONDCP) top five goals in the Nation's Drug Control Strategy. Activities that target youth further this goal. Youth drug and crime prevention programs must include, but are not limited to, groups composed of young people ages 16 through 18. Your youth drug and crime prevention activities should be coordinated by adults but have housing authority youth actively involved in organizing youth leadership, sports, recreational, cultural and other activities. Eligible youth services may include: youth sports; youth leadership skills training; cultural and recreational activities. These youth services provide an alternative to drugs and drug-related criminal activity for public housing and Native American youth. Youth leadership skills training may include training in leadership, peer pressure reversal, resistance or refusal skills, life skills, goal planning, parenting skills, and other relevant topics. Youth leadership training should be designed to place youth in leadership roles including: mentors to younger program participants, assistant coaches, managers, and team captains. Cultural and recreational activities may include ethnic heritage classes, art, dance, drama and music appreciation.

The following are eligible youth services activities:

(1) Salaries and expenses for staff for youth sports programs and cultural activities and leadership training;

(2) Sports and recreation equipment to be used by participants;

(3) Non-profit subgrantees that provide scheduled organized sports competitions, cultural, educational, recreational or other activities, including: Boys and Girls Clubs, YMCAs, YWCAs, the Inner City Games, Association of Midnight Basketball Leagues.

(4) Liability insurance costs for youth sports activities.

(iv) *Economic and Educational Opportunities for Resident Adult and Youth.* Any economic and educational activities should provide residents opportunities for interaction with, or referral to, established higher education, vocational institutions and/or private sector businesses in the immediate surrounding communities with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals and become self-sufficient.

Any economic and educational opportunities for residents and youth activities should be consistent with "welfare to work" and related Federal, Tribal, State and local government efforts for employment training, education and employment opportunities related to "welfare to work" goals. Establishing or referring adults and youth to computer learning centers, employment service centers (coordinated with Federal, Tribal, State and local employment offices), and micro-business centers are eligible.

Limited educational scholarships are permitted under this section. No one individual award may exceed \$500.00, and there is a total maximum scholarship program cap of \$10,000. Educational scholarship FY 1999 PHDEP funds must be obligated and expended during the term of your grant. You should develop and document a scholarship strategy; the financial and management controls that will be used; and projected outcomes.

(e) *Intervention.* The aim of intervention is to identify or detect residents with substance abuse issues, assist them in modifying their behavior, and in getting early treatment, and structured aftercare.

(f) *Substance Abuse/Dependency Treatment.* (i) Treatment funded under this program should be "in and around" the premises of the housing authority/development(s) you proposed for funding. In undertaking substance abuse/dependency treatment programs, you must establish a confidentiality policy regarding medical and disability related information.

(ii) Funds awarded for substance abuse/dependency treatment must be targeted towards developing and implementing, or expanding and improving sobriety maintenance, substance-free maintenance support groups, substance abuse counseling, referral treatment services, and short or long range structured aftercare for residents.

(iii) Any drug program should address the following goals for residents:

(1) Increasing accessibility of treatment services;

(2) Decreasing drug-related crime "in and around" your housing authority/development(s) by reducing and/or eliminating drug use.; and

(3) Providing services designed for youth and/or adult drug abusers and recovering addicts (e.g., prenatal and postpartum care, specialized family and parental counseling, parenting classes, domestic or youth violence counseling).

(iv) Approaches that have proven effective with similar populations have

included, but are not limited to, the following:

(1) Formal referral arrangements to other treatment programs in cases where the resident is able to obtain treatment costs from sources other than this program.

(2) Family/youth counseling.

(3) Linkages to educational and vocational training and employment counseling.

(4) Coordination of services from and to appropriate local substance abuse/treatment agencies, HIV-related service agencies, mental health and public health programs.

(v) As applicable, you must develop a working partnership with the Single State Agency or local, Tribal or State license provider or authority with substance abuse program(s) coordination responsibilities to coordinate, develop and implement your substance dependency treatment program.

(vi) You must use counselors (contractual or otherwise) that meet any applicable Federal, State, Tribal, and local government licensing, bonding, training, certification and continuing training re-certification requirements.

(vii) You must get certification from the Single State Agency or authority with substance abuse and dependency programs coordination responsibilities that your proposed program is consistent with the State plan; and that the service(s) meets all Federal, State, Tribal and local government medical licensing, training, bonding, and certification requirements.

(viii) Funding is permitted for drug treatment of housing authority residents at local in-patient medical treatment programs and facilities. PHDEP funding for structured in-patient drug treatment under PHDEP funds is limited to 60 days, and structured drug out-patient treatment, which includes individual/family aftercare, is limited to 6 months. If you are undertaking drug treatment programs, your program should provide, directly or indirectly, employment training, education and employment opportunities related to "welfare to work."

(ix) Funding is permitted for detoxification procedures designed to reduce or eliminate the short-term presence of toxic substances in the body tissues of a patient.

(x) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a short/long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(3) *Resident Management Corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs).* RMCs, and incorporated RCs and ROs, may be a subcontractor to their housing authorities, or Tribe/TDHE, to develop security and substance abuse prevention programs for residents. Such programs may include voluntary tenant patrol activities, substance abuse education, intervention, and referral programs, youth programs, and outreach efforts. The elimination of drug-related crime within housing authorities/developments must have the active involvement and commitment of public and Indian housing residents and their organizations. Active involvement requires that residents be involved in the planning process and implementation.

To enhance the ability of housing authorities, and Tribes/TDHEs, to combat drug-related crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) may undertake program management functions, notwithstanding the otherwise applicable requirements of 24 CFR part 964. Sub-contracts with the RMC/RC/RO must include the amount of funding, applicable terms, conditions, financial controls, payment mechanism schedule, performance and financial report requirements, special conditions, including sanctions for violating the agreement, and monitoring requirements. Costs must not be incurred until a written contract is executed.

(4) *Employment of HA Security Personnel.* You may employ HA security personnel. Employment of security personnel is divided into two categories: security personnel services, and housing authority police departments. You are encouraged to involve police officials residing in public housing to partake in PHDEP security-related programs. The following specific requirements apply to all employment of security personnel activities funded under PHDEP:

(a) *Compliance.* Security guard personnel and public housing authority police departments must be in compliance with, all relevant Federal, State, Tribal or local government insurance, licensing, certification, training, bonding, or other law enforcement requirements.

(b) *Law Enforcement Service Agreement.* You must enter into a law enforcement service agreement with the local law enforcement agency and if applicable, the contract provider of security. Your service agreement must include:

(i) The activities security guard personnel or the public housing authority police department (HAPD) will perform; the scope of authority; written policies, procedures, and practices that will govern security personnel or HAPD performance (i.e., a policy manual and how security guard personnel or the HAPD shall coordinate activities with your local law enforcement agency);

(ii) The types of activities that your approved security guard personnel or the HAPD are expressly prohibited from undertaking.

(c) *Policy Manual.* Security guard personnel services and PHPDs must be guided by a policy manual that directs the activities of its personnel and contains the policies, procedures, and general orders that regulate conduct and describes in detail how jobs are to be performed. The policy manual must exist before incurring personnel costs for security services. To comply with State police department standards and/or Commission on Accreditation Law Enforcement Agencies (CALEA), you must also ensure all security guard personnel and housing authority police officers are trained in the following areas. These areas must also be covered in your policy manual:

- (i) Use of force;
- (ii) Resident contacts;
- (iii) Enforcement of HA rules;
- (iv) Response criteria to calls;
- (v) Pursuits;
- (vi) Arrest procedures;
- (vii) Reporting of crimes and workload;
- (viii) Feedback procedures to victims;
- (ix) Citizens' complaint procedures;
- (x) Internal affairs investigations;
- (xi) Towing of vehicles;
- (xii) Authorized weapons and other equipment;
- (xiii) Radio procedures internally and with local police;
- (xiv) Training requirements;
- (xv) Patrol procedures;
- (xvi) Scheduling of meetings with residents;
- (xvii) Reports to be completed;
- (xviii) Record keeping and position descriptions on all personnel;
- (xix) Post assignments;
- (xx) Monitoring;
- (xxi) Self-evaluation program requirements; and
- (xxii) First aid training.

(d) *Data Management.* A daily activity and incident complaint form approved by the housing authority must be used by security personnel and officers for the collection and analysis of criminal incidents and responses to service calls. Security guard personnel and HAPDs must establish and maintain a system of

records management for the daily activity and incident complaint forms that appropriately ensures the confidentiality of personal criminal information.

(e) *Management Informational Systems (MIS) (computers, software, and associated equipment) and management personnel.* Costs in support of these activities are eligible for funding.

(5) *Security Personnel Services.* Contracting for, or direct housing authority employment of, security personnel services in and around housing development(s) is permitted under this program. However, contracts for security personnel services must be awarded on a competitive basis.

(a) *Eligible Services—Over and Above.* Security guard personnel funded by this program must perform services that are over and above those usually performed by local municipal law enforcement agencies on a routine basis. Eligible services may include patrolling inside buildings, providing personnel services at building entrances to check for proper identification, or patrolling and checking car parking lots for appropriate parking decals.

(b) *Employment of Residents.* HUD encourages you to employ qualified resident(s) as security guard personnel, and/or to contract with security guard personnel firms that demonstrate a program to employ qualified residents as security guard personnel. Since your program of eliminating drug-related crime should promote "welfare to work" an excellent way to implement this is to employ residents.

(6) *Employment of Personnel and Equipment for HUD Authorized Housing Authority Police Departments.* Funding equipment and employment of housing authority police department (HAPD) personnel is permitted for housing authorities that already have HAPDs. The following 12 housing authorities are approved by HUD as being eligible under the FY 1999 PHDEP for these activities:

Baltimore Housing Authority and
Community Development, Baltimore,
MD

Boston Housing Authority, Boston, MA
Buffalo Housing Authority, Buffalo, NY
Chicago Housing Authority, Chicago, IL
Cuyahoga Metropolitan Housing

Authority, Cleveland, OH
Housing Authority of the City of Los
Angeles, Los Angeles, CA

Housing Authority of the City of
Oakland, Oakland, CA

Philadelphia Housing Authority,
Philadelphia, PA

Housing Authority of the City of
Pittsburgh, Pittsburgh, PA

Waterbury Housing Authority,
Waterbury, CT
Virgin Islands Housing Authority,
Virgin Islands
District of Columbia Housing Authority,
Washington, DC

(a) Notice PIH 98-16, issued March 11, 1998, reinstated PIH 95-58 (PHA) "Guidelines for Creating, Implementing and Managing Public Housing Authority Police Departments in Public Housing Authorities." This Notice identifies prerequisites for creating HAPDs and provides guidance to assist housing authorities in making decisions about public housing security, analysis of security needs, and performance measures and outcomes.

(b) Housing authorities with their own HAPDs, but that are not included in the list above, shall request (in writing) to be recognized by HUD as a HAPD. The written request must be sent to the Office of the Deputy Assistant Secretary for Public and Assisted Housing Delivery, Public and Indian Housing, Department of Housing and Urban Development, Room 4204, 451 Seventh Street, SW, Washington, DC 20410. This request must be approved by HUD before you submit your FY 1999 PHDEP application.

(c)(i) HAPDs funded under this program that are not nationally or state accredited must submit a plan and timetable for such accreditation. Housing authorities may use either their State accreditation program, if one exists, or the Commission on Accreditation for Law Enforcement Agencies (CALEA) for this purpose. Use of grant funds for HAPD accreditation activities is permitted.

(ii) Housing authorities receiving grants for funding HAPDs are required to hire an HAPD accreditation specialist to manage the accreditation program. If you have a public housing police department funded under the FY 1996, 1997, or 1998 PHDEP you must include in your plan what progress you made in implementing your accreditation program and the projected date of accreditation. HUD will monitor results of your plan and timetable. HAPDs not meeting their timetables will be ineligible for funding in FY 2000.

(d) If you are allocating funds for this activity, you must describe the current level of local law enforcement agency baseline services being provided to the housing authority/development(s) proposed for assistance. Local law enforcement baseline services are defined as ordinary and routine services provided to the residents as part of the overall city and/or county-wide deployment of police resources to

respond to crime and other public safety incidents including: 911 communications, processing calls for service, routine patrol officer responses to calls for service, and investigative follow-up of criminal activity.

(e) If you are allocating funds for housing authority public housing authority police department officers, you must have car-to-car (or other vehicles) and portable-to-portable radio communications links between public housing authority police officers and local law enforcement officers to assure a coordinated and safe response to crimes or calls for services. The use of scanners (radio monitors) is not sufficient to meet the requirements of this section. If you do not have such links you must include in your plan a timetable for the implementation of such communications links. This activity is eligible for funding. If you were a housing authority funded under the FY 1994, 1995, 1996, 1997, and/or 1998 PHDEP for public housing police departments, you must include in your plan what progress has been made in implementing its planned communications links.

(f) HAPDs funded under this program that are not employing a community policing concept must incorporate a community policing concept in the implementation of their policing activities. Community policing under PHDEP is defined as a method of providing law enforcement services partnership among residents, police, schools, churches, government services, the private sector, and other local, State, Tribal, and Federal law enforcement agencies to prevent crime and improve the quality of life by addressing the conditions and problems that lead to crime and fear of crime. Community policing uses proactive measures including foot patrols, bicycle patrols, and motor scooters patrols. It also includes KOBAN activities where police officers operate out of police mini-stations, and other community-based facilities in housing authorities providing human resource activities with youth), and citizen contacts. This concept empowers police officers at the beat and zone level and residents in neighborhoods to:

- (i) Reduce crime and fear of crime;
- (ii) Ensure the maintenance of order;
- (iii) Provide referrals of residents, victims, and homeless persons to social services and government agencies;
- (iv) Ensure feedback of police actions to victims of crime; and (v) Promote a law enforcement value system based on the needs and rights of residents.

For additional information regarding KOBAN community policing contact

Cedric Brown, (202) 708-1197, extension 4057.

(g) Authorized PHPDs can purchase or lease law enforcement clothing or equipment. Eligible law enforcement clothing or equipment may include uniforms and protective vests; firearms/weapons and ammunition; police vehicles including cars, vans, buses; or other equipment supporting PHPDs crime prevention and security mission. If you have not been identified by HUD as having an authorized PHPD, you are not permitted to use PHDEP funds to purchase any clothing or equipment for use by local municipal police departments and/or other law enforcement agencies.

(7) *Reimbursement of Local Law Enforcement Agencies for Additional (Supplemental—Over and Above Local Law Enforcement Baseline Services) Security and Protective Services.* Additional security and protective services are permitted if services are over and above the local police department's current level of baseline services. Housing authorities, Tribes, and TDHEs are required to identify the level of local law enforcement services received and the increased level of services to be received in their local Cooperation Agreement.

(8) *Employment of Investigators.* Employment of, and equipment for, one or more individuals to investigate drug-related crime "in and around" the real property comprising your development(s) and providing evidence relating to such crime in any administrative or judicial proceedings is permitted. Under this section, reimbursable costs associated with the investigation of drug-related crimes (e.g., travel directly related to the investigator's activities, or costs associated with the investigator's testimony at judicial or administrative proceedings) may only be those directly incurred by the investigator.

(a) If you are a housing authority that employs investigators funded by this program, you must demonstrate compliance with all relevant Federal, Tribal, State or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(b) Both you and the provider of the investigative services are required to execute a written agreement that describes the following:

(i) The activities that your investigators will perform, their scope of authority, reports to be completed, established investigative policies, procedures, and practices that will govern their performance (i.e., a Policy Manual; and how your investigators will

coordinate their activities with local, State, Tribal, and Federal law enforcement agencies); and prohibited activities.

(ii) The activities the housing authority/Tribal investigators are expressly prohibited from undertaking.

(c) Your investigator(s) may use PHDEP funds to purchase or lease any law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, or vehicles; including cars, vans, buses, protective vests, and any other supportive equipment.

(d) Your investigator(s) shall report on drug-related crime in your developments. You must establish, implement and maintain a system of records management that ensures confidentiality of criminal records and information. Housing authority-approved activity forms must be used for collection, analysis and reporting of activities by your investigators. You are encouraged to develop and use Management Information Systems (MIS) (Computers, software, hardware, and associated equipment) and hire management personnel for crime and workload reporting in support of your crime prevention and security activities.

(e) You may not expend funds and funds will not be released by the local HUD Field Office/AONAP until you have met the requirements of section IV.(6)(d) of this Notice.

(9) *Voluntary Tenant Patrols.* HUD believes the elimination of drug-related crime within and around the housing authority/development(s) requires the active involvement and commitment of residents and their organizations. Members of tenant patrols must be volunteers and must be residents of the housing authority's development(s). Voluntary tenant patrols are expected to patrol in your development(s) proposed for assistance, and to report illegal activities to appropriate housing authority staff, and local, State, Tribal, and Federal law enforcement agencies, as appropriate.

(a) Training equipment, uniforms for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted. All costs must be reasonable, necessary and justified. Bicycles, motor scooters, all season uniforms and associated equipment to be used, exclusively, by the members of your voluntary tenant patrol are eligible items. Voluntary tenant patrol uniforms and equipment must be identified with your specific housing authority/development(s) identification and markings.

(b) Housing authorities are required to obtain liability insurance to protect

themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance is negligible.

(c) If you are funding voluntary tenant patrol activities, you, your local law enforcement agency, and the tenant patrol, before expending grant funds, are required to execute a written agreement that includes:

(i) The nature of the activities to be performed by your voluntary tenant patrol, the patrol's scope of authority, assignment, policies, procedures, and practices that will govern the voluntary tenant patrol's performance and how the patrol will coordinate its activities with the law enforcement agency;

(ii) The activities the voluntary tenant patrol is expressly prohibited from undertaking and that the carrying or use of firearms, weapons, nightsticks, clubs, handcuffs, or mace is prohibited;

(iii) Required initial and on-going voluntary tenant patrol training members will receive from the local law enforcement agency; (Please note that training by HUD-approved trainers and/or the local law enforcement agency is required before putting a voluntary tenant patrol into effect); and

(iv) Voluntary tenant patrol members will be subject to individual or collective liability for any actions undertaken outside the scope of their authority (described in paragraph (ii) above) and that such acts are not covered under your housing authority liability insurance.

(d) PHDEP grant funds must not be used for any type of financial compensation, such as full-time wages or salaries for voluntary tenant and/or patrol participants. Funding for housing authority personnel or resident(s) to be hired to coordinate this activity is permitted. Excessive staffing is not permitted.

(10) *Evaluation of PHDEP Activities.* Funding is permitted to contractually hire organizations and/or consultant(s) to conduct an independent assessment and evaluation of the effectiveness of your PHDEP program. You should include in your plan and budget contracting with an independent survey organization to conduct an annual resident survey in your targeted developments/areas. The amount of funding proposed for conducting assessments or evaluations should be necessary, reasonable, and justified. However, even if adequately justified, HUD would not expect that this cost should exceed ten (10) percent of the total grant amount requested.

(11) *High Intensity Drug Trafficking Areas (HIDTAs).* Funding may be used

for activities to eliminate drug-related crime in housing owned by a public housing agency that is not public housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted. For example, housing that receives tenant subsidies under Section 8 is federally assisted and would not qualify, but housing that receives only State, Tribal, or local assistance would qualify if it meets the following two requirements:

(a) The housing is located in a high intensity drug trafficking area designated pursuant to Section 1005 of the Anti-Drug Abuse Act of 1988 (see Appendix A); and

(b) The PHA owning the housing demonstrates, on the basis of information submitted, that the drug-related crime at the housing authority project has a detrimental affect in or around the housing.

The High Intensity Drug Trafficking Areas (HIDTAs) are areas identified as having problems that adversely impact the rest of the country.

(E) *Ineligible Activities.* PHDEP funding *is not permitted* for any of the activities listed below.

(1) Costs incurred before the effective date of your grant agreement (Form HUD-1044), including, but not limited to, consultant fees related to the development of your application or the actual writing of your application.

(2) The purchase of controlled substances for any purpose. Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

(3) Compensation of informants, including confidential informants. These should be part of the baseline services provided and budgeted by local law enforcement agencies.

(4) Direct purchase or lease of clothing or equipment, vehicles (including cars, vans, and buses), uniforms, ammunition, firearms/weapons, protective vests, and any other supportive equipment for use in law enforcement or military enforcement except for HAPDs and investigator activities listed in this program requirements section.

(5) Construction of facility space in a building or unit, and the costs of retrofitting/modifying existing buildings owned by the housing authorities and TDHEs for purposes other than: community policing mini-station operations, adult/youth education, employment training facilities, and drug abuse treatment activities.

(6) Organized fund raising, advertising, financial campaigns, endowment drives, solicitation of gifts

and bequests, rallies, marches, community celebrations, stipends and similar expenses.

(7) Court costs and attorneys fees related to screening or evicting residents for drug-related crime are not allowable.

(8) PHDEP grant funds cannot be transferred to any Federal agency.

(9) Costs to establish councils, resident associations, resident organizations, and resident corporations are not allowable.

(10) Indirect costs are not allowable.

(11) Supplant existing positions/activities. For purposes of the PHDEP, supplanting is defined as "taking the place of or to supersede".

(12) Alcohol-exclusive activities and programs are *not eligible* for funding under this program, although activities and programs may address situations of multiple abuse involving controlled substances and alcohol. PHDEP is limited to only controlled substances.

(F) *Commingling of Funds*. Housing authorities must not co-mingle funds of multiple HUD programs including: Comprehensive Improvement Assistance Program (CIAP); Comprehensive Grant Program (CGP); Economic Development and Supportive Services (EDSS); Tenant Opportunity Program (TOP); Indian Housing Block Grant (IHBG); Housing Opportunity for People Everywhere (HOPE) projects; Family Investment; Elderly Service Coordinator; and Operating Subsidy.

(G) *Reports and Closeout*. In accordance with 24 CFR 761.35, grantees are required to submit a PHDEP Semi-Annual Performance Report and the Semi-Annual Financial Status Report (SF-269A) to the appropriate HUD Field Office. HUD will require grantees to transmit reports electronically to facilitate providing more meaningful performance information to comply with the requirements of the Government Performance and Results Act (GPRA) and to provide greater assurance that the program activities undertaken are effective in reducing drugs and drug-related crime in areas targeted by PHDEP. HUD will require grantees to report the number of grant-funded, full-time equivalent positions for law enforcement and security services, and PHDEP-supported activities for residents broken out by youth, adults, families, and communities. For each

category of PHDEP-supported activities, other than law enforcement, grantees will report the results achieved using program or activity goals that are specific and measurable to the extent practicable.

In addition, all grantees shall be required, as indicated by written notice from HUD, to participate in HUD-sponsored training activities. HUD will issue a separate notice containing the details for meeting performance reporting requirements.

(H) *Computing Unit Counts*. Unit counts are to be computed as follows:

(1) PHAs. (a) The unit count includes rental, Turnkey III Homeownership, and Section 23 leased housing bond-financed projects. Eligible units are those that are under management and fully developed, and must be covered by an Annual Contributions Contract (ACC) during the period of grant award. In determining unit count for PHA-Owned Rental Housing, a long-term vacancy unit as defined in 24 CFR 990.102 is included in the count.

(b) PHAs preparing PHDEP applications are required to confirm/validate the unit count with the local Field Office (Office of Public Housing) before they submit their applications. Confirmation/Validation may be given if the unit count to be used is the same as the unit count reflected on a PHA's most recently approved Operating Budget (Form HUD-52564) and/or subsidy calculation (Form HUD-52723) submitted for that program. Field Offices that have PHAs that are not required to submit either of these forms may confirm/validate the PHDEP unit count if it is the same as the most recently submitted Form HUD-51234. Field Offices in validating the unit count shall not include Non-Federally Assisted Housing units located in High Intensity Drug-Trafficking Areas.

(2) *Tribes and TDHES*. (a) The unit count includes rental, Turnkey III and Mutual Help Homeownership units which have not been conveyed to a homebuyer, and Section 23 lease housing bond-financed projects. Such units must be counted as Current Assisted Stock under the Indian Housing Block Grant Program.

(b) Eligible units are those units which are under management and fully developed. However, you should note that in determining the unit count for

PHA-owned or Native American rental housing, a long-term vacancy unit, as defined in 990.102 or 24 CFR 950.102 (as revised May 1, 1996), is still included in the count. If you are an applicant for Native American housing developments, you must certify that the targeted units were covered by an ACC on September 30, 1997.

(c) Use the number of units counted as Formula Current Assisted Stock for Fiscal Year 1999 as defined in 24 CFR 1000.316.

(I) *MTCS Compliance*. PHAs, to receive funding, must be in compliance with HUD Notice PIH 99-2, Reporting Requirements for Multifamily Tenant Characteristics System (MTCS) (Form HUD-50058).

Authority

Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq), as amended by section 581 of the National Affordable Housing Act of 1990 (Pub.L. 101-625, approved November 28, 1990) (NAHA), section 161 of the Housing and Community Development Act of 1992 (Pub.L. 102-550, approved October 28, 1992) (HCDA 1992), and section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105-276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act).

Paperwork Reduction Act Statement

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0124. 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.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance number for the Public and Indian Housing Drug Elimination Program is 14.854.

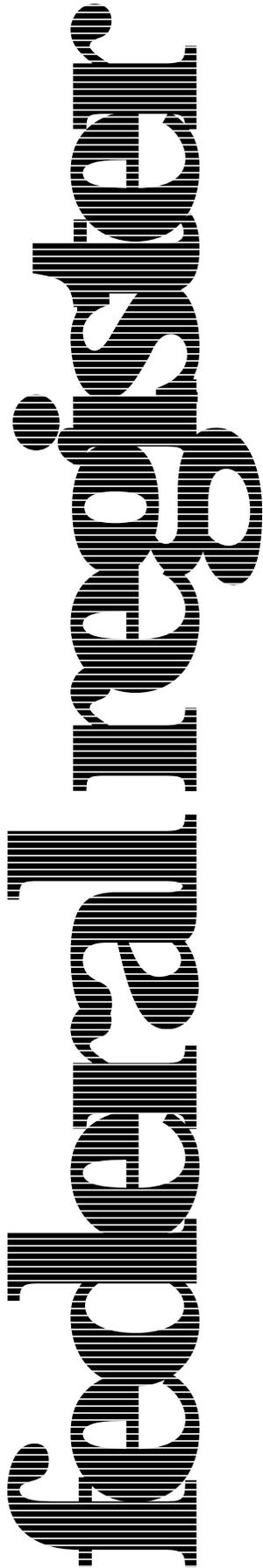
Dated: May 6, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99-11919 Filed 5-11-99; 8:45 am]

BILLING CODE 4210-33-P



Wednesday
May 12, 1999

Part VII

**Department of
Justice**

Immigration and Naturalization Service

**8 CFR Part 3 et al.
Adjustment of Status for Certain
Nationals of Haiti; Interim Final Rule**

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service****8 CFR Parts 3, 212, 240, 245, 274a, and 299**

[INS No. 1963-98; AG Order No. 2221-99]

RIN 1115-AF33

Adjustment of Status for Certain Nationals of Haiti

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) by establishing procedures for certain nationals of Haiti who have been residing in the United States to become lawful permanent residents of this country. This rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad, and waives many of the usual requirements for this benefit.

DATES: *Effective date:* This interim rule is effective June 11, 1999.

Comment date: Comments must be submitted on or before July 12, 1999.

ADDRESSES: Please submit written comments, original and two copies, to Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1963-98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service*—Suzy Nguyen, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514-5014; *For matters relating to the Executive Office for Immigration Review*—Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305-0470.

SUPPLEMENTARY INFORMATION:**Background**

On October 21, 1998, the President signed a Fiscal Year 1999 Omnibus Appropriations Act, Pub. L. 105-277

(112 Stat. 2681), into law. Division A, Title IX of that statute, the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), contained a provision in section 902 which allows certain nationals of Haiti to adjust their status to that of lawful permanent resident. Many aspects of section 902 of HRIFA are similar to corresponding aspects of section 202 of the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), enacted as title II of the District of Columbia Appropriations Act, 1998, Pub. L. 105-100 (111 Stat. 2160, 2193). In drafting both the supplementary information and the regulatory text contained in this implementing regulation, the Department of Justice (Department) has intentionally replicated much of the rule which implemented NACARA, taking into consideration the Department's experience in administering that statute. Wherever beneficial for purposes of clarity, the Department has endeavored to point out those aspects of HRIFA which differ from corresponding aspects of NACARA.

How Does Section 902 of HRIFA Affect Haitian Nationals?

Section 902 of HRIFA provides that the Attorney General shall adjust the status of certain Haitian nationals who are physically present in the United States to that of lawful permanent resident. In order to be eligible for benefits under HRIFA, an applicant must:

- Be a national of Haiti who was present in the United States on December 31, 1995;
- Have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for adjustment is filed (not counting any absence or absences totaling 180 days or less in the aggregate);
- Properly file an application for adjustment before April 1, 2000;
- Be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationality Act (the Act), other than those provisions specifically excepted by HRIFA; and
- Fall within one of the five classes of persons described in section 902(b)(1) of HRIFA.

The five classes described in section 902(b)(1) are:

- (1) Haitian nationals who filed for asylum before December 31, 1995;
- (2) Haitian nationals who were paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest;
- (3) Haitian national children who arrived in the United States without parents and

have remained without parents in the United States since arrival;

(4) Haitian national children who became orphaned subsequent to arrival in the United States; and

(5) Haitian children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since such abandonment.

For the last three ((3)-(5)) of these classes, the applicant must have been a child at the time of his or her arrival in the United States, and on December 31, 1995, but not necessarily at the time of his or her adjustment of status. In addition, certain family members of HRIFA beneficiaries are also eligible for adjustment of status under HRIFA.

What Are the Benefits of HRIFA?

An alien seeking adjustment of status under HRIFA is not subject to a number of the limitations on adjustment of status that would otherwise be applicable under section 245 of the Act.

First, a HRIFA applicant is not required to have been inspected and admitted or paroled into the United States.

Second, a HRIFA applicant is not subject to any of the barriers to adjustment contained in section 245(c) of the Act (e.g., the bars against aliens who have accepted or continued in unauthorized employment, aliens who remained in the United States longer than authorized, and aliens admitted as crewmen, in transit without visa, or under the visa waiver pilot program). Consequently, an alien who would otherwise be ineligible under section 245(c) may apply for adjustment under HRIFA.

Third, HRIFA applicants are not subject to the immigrant visa preference system requirements contained in sections 201 and 202 of the Act. Hence, neither the worldwide quota restrictions nor the per-country quota restrictions apply.

Fourth, applicants need not demonstrate that they are not inadmissible under paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Act in order to adjust status under section 902 of Public Law 105-277. Accordingly, HRIFA allows an otherwise-qualified applicant to adjust status under HRIFA notwithstanding inadmissibility for likelihood of becoming a public charge, for failure to obtain a labor certification, for failure to meet certain requirements applicable to foreign-trained physicians, for failure to meet certain standards for foreign health-care workers, for entering or remaining in the country illegally, for violating documentary requirements relating to entry as an immigrant, or for

accruing more than 180 days of unlawful presence prior to the alien's last departure or removal.

Fifth, unlike those seeking to adjust status under other provisions of law, a HRIFA applicant who has been paroled into the United States and is now in exclusion or removal proceedings before an Immigration Court is not barred from filing an application for adjustment of status under the provisions of HRIFA while in such proceedings.

What Are the HRIFA Requirements Regarding Presence in the United States?

Under the terms of HRIFA, an eligible principal applicant must have been present in the United States on December 31, 1995. The physical presence requirement contained in HRIFA differs from the one contained in section 202 of NACARA in two key aspects. First, the date from which presence is required is December 31, 1995, instead of December 1, 1995. Second, HRIFA requires that an alien seeking adjustment as a principal applicant have been physically present in the United States on the specific date of December 31, 1995, while NACARA allowed the applicant to have commenced physical presence at any time on or prior to December 1, 1995.

HRIFA also requires that eligible applicants must have maintained continuous physical presence in the United States since December 31, 1995. However, HRIFA provides for an exception to the requirement of continuous physical presence under which an eligible alien who was present in the United States on December 31, 1995, is permitted to have been outside the United States for a total of up to 180 days in the aggregate since that date, and prior to the date of his or her adjustment of status to lawful permanent resident, without risk of interrupting his or her continuous physical presence. Except as otherwise provided, however, if an alien has been outside the United States for more than 180 days since December 31, 1995, the alien is not eligible for adjustment under HRIFA.

Furthermore, the Department is providing, by regulation, for three additional circumstances under which an alien may be outside the United States without that time affecting his or her eligibility for adjustment of status under HRIFA:

(1) If the Immigration and Naturalization Service (Service) has granted an alien an Authorization for Parole of an Alien into the United States (Form I-512), then the periods of time during which an alien is absent from the

United States pursuant to such an authorization is not counted toward the 180-day cumulative period.

(2) If the Service has granted parole authorization under the provisions of 8 CFR 245.15(t)(2) to an alien for the purpose of traveling to the United States in order to apply for adjustment of status under HRIFA, then the period of time from the date the alien's request for parole authorization is filed at the Nebraska Service Center until the alien is paroled into the United States pursuant to that authorization is not counted toward the 180-day cumulative period.

(3) If the Service has granted parole authorization under the provisions of 8 CFR 245.15(t)(2) to an alien for the purpose of traveling to the United States in order to apply for adjustment of status under HRIFA, then the period of time from the date on which HRIFA was enacted (October 21, 1998) until 30 days from the effective date of this regulation is not counted toward the 180-day cumulative period. The Department is making this provision in order to allow an applicant for such parole authorization time to file the application with the Nebraska Service Center.

How Can a HRIFA Applicant Prove Physical Presence in the United States?

Section 902(b)(1) of HRIFA requires that an applicant must prove presence in the United States on December 31, 1995, but the statute is silent as to the methods by which an applicant may demonstrate his or her presence in the United States on that date. In this rule, the Department is providing that a HRIFA applicant may prove such presence in the United States through submission of evidence demonstrating that on or before December 31, 1995, he or she:

(1) was admitted to the United States in an immigrant or nonimmigrant classification;

(2) was paroled into the United States;

(3) was placed in exclusion proceedings under section 236 of such Act (as in effect prior to April 1, 1997);

(4) was placed in deportation proceedings under section 242 or 242A of such Act (as in effect prior to April 1, 1997);

(5) applied for any benefit under the Act by means of an application establishing his or her presence in the United States;

(6) was issued other documentation by State and local authorities (such as school, hospital, police, and public assistance records), demonstrating the alien's presence in the United States on or prior to December 31, 1995; or

(7) in the case of an applicant seeking classification as a child under section 902(b)(1)(C) of HRIFA, a transcript from a qualified private or religious school.

Normally, an alien may make such a demonstration by submitting a photocopy of a Government-issued document. If the alien is not in possession of such document, but believes that a copy of the document is already contained in the Service file relating to him or her, he or she may submit a statement as to name and location of the issuing Government agency, the type of document and the date on which it was issued.

Because the applicant is required to establish presence in the United States on December 31, 1995, if the documentation submitted relates to a date prior to December 31, 1995, the applicant bears the additional burden of establishing either that he or she did not depart after the date on which presence has been established, or that (if he or she did depart) he or she returned to the United States on or prior to December 31, 1995. Doing so is analogous to proving continuity of presence, and if required, the applicant can meet this initial burden by using the methods described below for proving continuity of presence. While there are no particular criteria for establishing "non-departure," or departure and return, the applicant should be prepared to resolve any doubts that may arise in this regard. The Department solicits comments from interested parties on issues related to this matter.

The Department believes that the evidentiary alternatives for establishing continuity of presence will also provide sufficient opportunities for qualified applicants to establish physical presence in the United States on December 31, 1995, without encouraging fraudulent applications. However, in order to ensure that no group of eligible aliens is precluded from establishing eligibility for HRIFA benefits, the Department is soliciting public comments on the need for any additional methods of establishing commencement of physical presence in the United States and suggestions as to what those additional methods should be. Commenters are encouraged to explain which classes of aliens would benefit from the proposal, and how the proposal could be implemented without severely compromising the integrity of the adjudicative process.

A HRIFA applicant also must demonstrate that he or she was continuously physically present in the United States since December 31, 1995. See HRIFA section 9021(b)(2). As in the case of the physical presence requirement just discussed, however, the HRIFA statute is silent as to the methods by which an applicant can demonstrate that presence. This interim

rule provides that a HRIFA applicant may demonstrate continuity of physical presence in the United States through the submission of one or more documents issued by any governmental or non-governmental authority. Such documentation must bear the name of the applicant, have been dated at the time it was issued, and bear the seal or signature of the issuing authority (if the documentation is normally signed or sealed), issued on letterhead stationery, or otherwise authenticated. In some cases, a single document may suffice to establish continuity for the entire post-December 31, 1995, period. In other cases, the alien may need to submit a number of documents. For example, a college transcript or an employment record may show that an applicant attended school or worked in the United States throughout the entire post-December 31, 1995, period. On the other hand, an applicant would need to submit a number of monthly rent receipts or electric bills to establish the same continuity of presence. While the Department neither requires nor wants the applicant to submit documentation to show presence on every single day since December 31, 1995, there should be no significant chronological gaps in the documentation either. Generally, a gap of 3 months or less in documentation is not considered significant. However, if the adjudicating officer or immigration judge is satisfied as to the continuity of the applicant's presence in the United States, he or she may accept considerably larger gaps in documentation. Conversely, if the adjudicating officer or immigration judge has reason to doubt the applicant's claim, he or she may require additional documentation. Furthermore, if the applicant is aware of documents already contained in his or her Service file that establish physical presence, he or she may merely list those documents, giving the type and date of the documents. Examples of such documents might include a written copy of a sworn statement given to a Service officer, the transcript of a formal hearing, or a Record of Deportable/Inadmissible Alien (Form I-213).

How Will the Department Evaluate the Evidence Submitted?

In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with Service and EOIR records having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the

purview of the adjudicating authority (i.e., the Service or EOIR). It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency which the applicant desires to be considered in support of his or her application.

How Does an Applicant Establish Eligibility As an Alien Who Applied for Asylum or Was Paroled into the United States Prior to December 31, 1995?

Section 902(b)(1)(A) of HRIFA pertains to applicants who filed for asylum before December 31, 1995, and section 902(b)(1)(B) of HRIFA pertains to applicants who were paroled into the United States prior to December 31, 1995, either after having been identified as having a credible fear of persecution, or for emergent reasons or reasons deemed strictly in the public interest. The universe of persons falling into these two categories is both narrowly defined in scope and fully identifiable in Service records. The issue is one of locating the Service record that pertains to the particular applicant. In order to facilitate locating his or her record, an applicant who applied for asylum prior to December 31, 1995, should submit a copy of the first page of the Form I-589, Application for Asylum and Withholding of Deportation, filed at that time, or a copy of the receipt for such filing issued by the Service. In the case of an alien who was included as a dependent in the asylum application filed by a spouse or parent, a copy of the first page of that spouse or parent's application, or a copy of the filing receipt, will be sufficient, even if the relationship has since been altered through death, divorce, or the individual attaining the age of 21 years. If the applicant has lost both the receipt and his or her copy of the application which was filed, he or she may submit a statement giving as much information as possible about the date on which the application was filed and the location of the Service office to which it was submitted.

Likewise, if the applicant was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest, he or she should submit a photocopy of the parole document (Form I-94, Arrival-Departure Record) issued at the time. If the parole document was lost or is otherwise not available, the applicant may submit a statement explaining what happened to the document and giving as much information as possible about the date of parole and location of the Service office which issued the parole.

What Provisions of the Statute Pertain Exclusively to Haitian Children in the United States?

Section 902(b)(1)(C) of HRIFA describes three groups of children who may adjust status to that of lawful permanent resident. Membership in all three groups is limited to those persons who were children both at the time of arrival in the United States and on December 31, 1995. Furthermore, all three groups require the occurrence of some qualifying event or events: for subsection (C)(i), the qualifying events are the arrival in the United States without parents and the continuation of such situation since arrival; for subsection (C)(ii), it is becoming an orphan subsequent to arrival; and for subsection (C)(iii), it is the abandonment by parents or guardians prior to April 1, 1998, and the continuation of such abandonment.

What Is Meant by the Terms "Child" and "Parent?"

HRIFA mandates that, as used in HRIFA, the term "child" shall have the same meaning as that provided in the text above subparagraph (A) of section 101(b)(1) of the Act. That text defines a child as "an unmarried person under twenty-one years of age." HRIFA, however, does not provide a definition of the term "parent." In determining how this term should be defined for purposes of HRIFA, the Department looked at the statutory definition of that term contained in section 101(b)(2) of the Act, which states:

(2) The term "parent", "father", or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

The circumstances giving rise to a parental relationship set forth in section 101(b)(1) are as follows:

- (A) A child born in wedlock;
- (B) A stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;
- (C) A child legitimated under the law of the child's residence or domicile, or under the law of the father's residence

or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) A child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E) A child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(F) A child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

In promulgating these regulations, the Department follows these definitions, with two notable exceptions. The first exception is that the discussion in section 101(b)(1)(F) pertaining to the qualifications of the petitioning United States citizen prospective parents is clearly irrelevant to HRIFA adjustment cases. The second is that the discussion of a child becoming an orphan through abandonment does not pertain to HRIFA

adjustment cases because HRIFA mandates a separate standard for consideration as an abandoned child.

As previously noted, HRIFA provides that the term child is limited to persons who are both under age 21 and unmarried. Individuals who met the definition of child at the time of their arrival in the United States must also have met the definition on December 31, 1995. Any such persons who attained the age of 21 years or married prior to December 31, 1995, are not eligible for classification as a child under any of the three subcategories of section 902(b)(1)(C) of HRIFA. However, if otherwise eligible, they may seek classification as an asylum applicant under section 902(b)(1)(A) of HRIFA, as parolee under section 902(b)(1)(B) of HRIFA, or as a dependent under section 902(d)(1) of HRIFA.

An applicant who met the eligibility standard for adjustment of status as a child under section 902(b)(1)(C) of HRIFA would still be eligible for adjustment even if the individual has attained the age of 21 years or married after December 31, 1995. Furthermore, if an applicant described in section 902(b)(1)(C) acquired a spouse or stepchild through a marriage occurring after December 31, 1995, such spouse or stepchild may adjust status under section 902(d)(1) of HRIFA, if otherwise eligible, as a dependent of a principal applicant.

In general, it does not matter whether a principal applicant under section 902(b)(1)(C) was born in or out of wedlock, has been legitimated, or is an adopted child or a stepchild.

If a stepparent-stepchild relationship was created after the child turned 18, that relationship is not recognized under the Act. Therefore, for purposes of adjustment of status under HRIFA, any "qualifying event" involving such stepparent is immaterial. Likewise, if an adoption took place after a child reached the age of 16 years, no parent-child relationship exists under immigration law and any "qualifying event" involving such adoptive parent is also immaterial.

Where an applicant acquired a stepparent through the marriage of his or her parent, the applicant would have to establish a qualifying event relating to each of the parents and stepparents. For example, the deaths of a father and stepmother, while tragic, do not make a child an orphan if his or her mother and stepfather are still alive.

On the other hand, if a child was adopted prior to age 16, only a qualifying event which involved the adopting parent or parents is relevant. A qualifying event which pertained to a

parent whose relationship to the child had been severed by the adoption process is immaterial.

In Haiti, a child who was born out of wedlock and not acknowledged by the father or otherwise legitimated is illegitimate. Such child is deemed under the Act to have only one parent, the mother. However, under the Civil Code of Haiti, all children born out of wedlock and acknowledged by the father are legitimate. Such children are deemed under the Act to have two parents.

Finally, it should be noted that the term "parent" does not include foster parents or guardians.

How Does an Applicant Establish Eligibility as a Child Without Parents in the United States or As an Orphaned or Abandoned Child?

Children Without Parents in the United States

With regard to the specific subcategories of section 902(b)(1)(C) of HRIFA, the first pertains to children who arrived in the United States without parents and have remained without parents in the United States. Since the term "without parents in the United States" is not defined in the Act, the common meaning of the words will prevail. If the applicant had any parents, as discussed above, in the United States at the time of his or her arrival, or at any time since arrival, he or she is not eligible for classification under this subcategory. If even one of the applicant's parents was living in the United States during this period, the applicant is ineligible for classification under this subcategory, regardless of whether the applicant lived with or received any support from such parent.

In order to establish eligibility under this subcategory, an applicant should establish that his or her parents were either deceased or physically outside the United States both at the time of the applicant's arrival in the United States and at all times since then. If the location of the applicant's parents was unknown at the time of arrival and at all times since, the applicant must establish such facts through court records or other pertinent documents.

Children Who Became Orphans Subsequent to Arrival

Section 902(b)(1)(C)(ii) of HRIFA pertains to persons who became orphaned after their arrival in the United States. We recognize that section 101(b)(1)(F) of the Act describes orphans as children who became orphaned through the death or disappearance of, abandonment or

desertion by, or separation or loss from, both parents, or the irrevocable release by the sole or surviving parent who is unable to provide support. However, the Department believes that section 902(b)(1)(C)(ii) relates to a narrower definition of the term orphan, pertaining only to those children who were orphaned through the death or disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent). The Department reached this conclusion based on the fact that Congress chose to include children who arrived in the United States without parents and children who had been abandoned by parents or guardians in the other two subcategories, an action which would have been meaningless had Congress intended to use the broader definition of the term orphan for purposes of section 902(b)(1)(C)(ii). In order for an applicant to be classified as an orphaned child under this subcategory, the application must be supported by:

- The death certificates of both of his or her parents, or the death certificate of the sole parent, showing that the death occurred after the date of the applicant's arrival in the United States and prior to his or her 21st birthday, or
- Evidence from a competent authority (such as a court or government agency having jurisdiction and authority to make decisions involving child welfare) establishing the disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent) after the applicant's arrival in the United States and prior to his or her 21st birthday.

Children Who Have Been Abandoned

Section 902(b)(1)(C)(iii) of HRIFA pertains to children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned. The four key elements that an applicant must establish are: that the abandonment occurred prior to April 1, 1998; that the applicant was under 21 years of age and unmarried at the time of such abandonment; that the parents or guardians were the parties who took the action to abandon the applicant; and that the relationship has not been re-established since such abandonment. A child who voluntarily left the home of his or her parents would not fall within this category. An applicant seeking consideration as an abandoned child should submit evidence from court

records or child welfare agencies to establish such abandonment.

The Department assumes that in most cases an abandoned child would be brought to the attention of local child welfare agencies who would then assure that the child is declared a ward of the court. The relating agency and court records would establish such. However, the regulations do not rule out the possibility of the applicant using other documentation in support of his or her claim. The Department solicits comments from interested parties on this assumption.

What Weight is Given to Existing Service Records?

In general, as with all applications and petitions under immigration law, the burden of proof is on the applicant to prove eligibility for adjustment of status under section 902 of HRIFA. In the case of many persons who arrived in the United States as children, evidence pertaining to the applicant's eligibility is already contained in Service records. If Service records show the applicant arrived without parents, as an orphan, or was brought to the Service as a subsequently abandoned child and placed into (and remains in) some sort of custody arrangement, there is a rebuttable presumption that the alien falls within the eligible class. The Department feels that such individuals are entitled to this rebuttable presumption due to the verifiability of the information in Service records.

Other potential applicants for classification under section 902(b)(1)(C) of HRIFA may not have been placed into a custody situation through the Service program. For example, persons who were already over the age of 18 at the time of their arrival in the United States, persons who entered without inspection and were never brought to the attention of the Service, and children who were abandoned subsequent to their arrival without such abandonment being reported to the Service, could all fall within the purview of section 902(b)(1)(C) of HRIFA. Such persons may still be able to qualify for adjustment of status, but must meet the burden of proof without the benefit of any presumption of eligibility. An applicant for benefits under this provision must provide all reasonably available evidence of eligibility, including pertinent death certificates, police reports, child welfare agency reports, etc. Such documents must have been created at the time of the event in question, or within a reasonable time thereafter, and must bear any appropriate signatures, seals, or other authenticating instruments.

How Does Admissibility to the United States Affect Eligibility for Adjustment of Status Under HRIFA?

The grounds of inadmissibility specified in paragraphs (4) (public charge), (5) (lack of labor certification), (6)(A) (illegal entry), (7)(A) (immigrant not in possession of an immigrant visa or other valid entry document), and (9)(B) (unlawful presence) of section 212(a) of the Act do not apply to HRIFA applicants.

An applicant who is inadmissible under any of the other grounds of inadmissibility listed in section 212 of the Act is ineligible for adjustment of status under HRIFA, unless he or she receives a waiver of that ground of inadmissibility.

A HRIFA applicant who is eligible for an individual waiver of a ground of inadmissibility not exempted by HRIFA may file an application for the waiver concurrently with his or her application for adjustment of status. Adjustment of status may not be granted unless the waiver has first been approved. For the purpose of adjudicating applications for benefits under HRIFA, the Director of the Nebraska Service Center has been given the authority to adjudicate applications for waivers under sections 212(e), 212(g), 212(h), and 212(i) of the Act, as well as applications for permission to reapply for admission after deportation or removal, including those filed in conjunction with requests for parole from outside the United States.

How Do the Provisions of HRIFA Affect Dependents of Haitian Nationals?

The provisions of HRIFA at section 902(d) address the eligibility requirements for certain dependents of principal HRIFA beneficiaries. To receive HRIFA benefits as a dependent of a HRIFA beneficiary, an alien must be: a national of Haiti; the spouse, child (i.e., under 21 years of age and unmarried), or unmarried son or daughter (i.e., 21 years of age or older) of a HRIFA principal beneficiary at the time of the principal beneficiary's adjustment of status to that of permanent resident; and admissible to the United States under section 212(a) of the Act, not including those provisions specifically excepted by HRIFA. The dependent's relationship to the HRIFA beneficiary must continue to exist at least through the time that the dependent is granted adjustment of status.

HRIFA dependents must be physically present in the United States in order to apply. A spouse or child need not have been present on

December 31, 1995, or during any particular period since that date. Although an unmarried son or daughter need not have been present in the United States on December 31, 1995, he or she must establish that he or she has been physically present in the United States for a continuous period commencing not later than December 31, 1995, not counting absences aggregating 180 days or fewer. Unlike section 202 of NACARA, section 902 of HRIFA does not specify a deadline by which the dependent's application for adjustment of status must be filed.

Many qualifying dependents of HRIFA principal applicants may be able to receive HRIFA benefits in their own right. However, some persons who do not meet the HRIFA standards will only be able to qualify as a dependent of a HRIFA beneficiary. Examples of otherwise eligible persons who can only qualify as dependents include: a spouse or child who arrived in the United States after December 31, 1995; a spouse or child who arrived before December 31, 1995, but has been absent for an aggregate of more than 180 days since that date; and an unmarried son or daughter who came to the United States prior to December 31, 1995, but neither entered as a parolee nor filed for asylum before that date.

How Are Dependents Who Do Not Meet HRIFA Requirements Affected?

A family member who is unable to qualify for HRIFA adjustment of status on his or her own, or as a dependent, may eventually become eligible for lawful permanent resident status under other provisions of the Act. Examples of such individuals would include a dependent who is not a national of Haiti, a spouse or child whose relationship to the principal applicant is established after the principal applicant is granted permanent resident status, and an unmarried son or daughter over the age of 21 who entered the United States after December 31, 1995. After becoming a permanent resident, a HRIFA beneficiary could file a visa petition to accord such a dependent immigrant classification under section 203(a)(2) of the Act, thereby enabling the dependent who is not eligible for HRIFA benefits to seek immigration to the United States through the normal family-based immigration process.

Can a Haitian Who Is, or Has Been, Covered Under the Deferred Enforced Departure (DED) Program Established by Order of the President on December 23, 1997, Apply for Adjustment of Status Under HRIFA?

Yes, if he or she is otherwise eligible for adjustment of status under section 902 of HRIFA.

What Happens If an Applicant Is Already in Exclusion, Deportation, or Removal Proceedings, or Has a Motion To Reopen or Motion to Reconsider Pending Before the Immigration Court or the Board of Immigration Appeals (Board)?

Persons who have proceedings pending before the Immigration Court or the Board, or persons who have a pending motion to reopen or reconsider filed on or before May 12, 1999, may apply for adjustment of status under section 902 of HRIFA, but these cases shall remain with the court holding jurisdiction over the pending proceedings.

Proceedings Pending Before the Immigration Court

If an alien (other than an arriving alien who has not been paroled into the United States) is in exclusion, deportation, or removal proceedings before the Immigration Court, or if an alien has a motion to reopen or motion to reconsider filed on or before May 12, 1999, pending before the Immigration Court, jurisdiction over an application for adjustment of status under section 902 of HRIFA shall lie with the Immigration Court. The procedure for filing an application for adjustment under HRIFA is described below. If an alien who is not clearly ineligible for adjustment of status under section 902 of HRIFA, and who has a pending motion to reopen or motion to reconsider, files an application for adjustment of status under section 902 of HRIFA, the Immigration Court shall reopen the alien's proceedings for consideration of the adjustment application. Applications shall be subject to the filing requirements of 8 CFR 3.11 and 3.31. A person would be "clearly ineligible" if, for example, he was not a national of Haiti or he was not a child on December 31, 1995, and had not filed for asylum or been paroled into the United States prior to that date.

Proceedings Pending Before the Board

In the case of an alien who is not clearly ineligible for adjustment of status under section 902 of HRIFA, and whose case is on appeal with the Board, the Board shall remand the proceedings to the Immigration Court for the sole

purpose of adjudicating the application for adjustment. The Board shall so remand the case regardless of whether the alien has already filed an application for adjustment of status under HRIFA. Further, if an alien has a pending motion to reopen or motion to reconsider filed with the Board on or before May 12, 1999, the Board shall reopen and remand the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 902 of HRIFA.

If upon remand the Immigration Court denies the application, or the alien fails to file an application for adjustment under section 902 of HRIFA, the Immigration Court shall return the case to the Board by certification. This will allow the Board to consider the denial of the HRIFA application as well as all other outstanding issues from the previously pending appeal or motion. Neither the alien nor the Service shall be required to file another Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR-26), or to pay an appeal filing fee, because the Immigration Court's certification of the denial to the Board will automatically transfer the Immigration Court's decision to the Board.

May an Alien Who Is in Proceedings Before an Immigration Court or the Board of Immigration Appeals Apply for Adjustment of Status Before the Service?

Yes, under certain circumstances. An alien who is in exclusion, deportation, or removal proceedings before the Immigration Court or the Board may move to have the proceeding administratively closed for the purpose of filing an application for adjustment under HRIFA. Such administrative closure requires the consent of the Service, which will issue field guidance shortly regarding the circumstances under which it will consent to such a request. If the Service concurs in such motion, the Immigration Court or the Board, as appropriate, will administratively close the proceedings. Such closure will permit recalendar or reinstating of the closed proceedings if, for example, the alien fails to file an application for adjustment of status under HRIFA before April 1, 2000, or the Service denies any application for adjustment of status filed by the alien under HRIFA. Should the Service deny the application, or the alien fail to file the application before April 1, 2000, the Service will move to recalendar or reinstate the exclusion, deportation, or removal proceedings. The Immigration

Court or the Board, as appropriate, will then recalendar or reinstate the proceedings. In the case of a HRIFA adjustment application denied by the Service, the alien could seek reconsideration of the denied adjustment application in such recalendared or reinstated proceedings.

What Happens If the Alien's Exclusion, Deportation, or Removal Proceedings Have Already Been Administratively Closed for Reasons Unrelated to HRIFA?

Aliens who have had their cases administratively closed or continued indefinitely with the consent of the Service after December 22, 1997, shall apply for adjustment of status under HRIFA with the Service. Such aliens may not seek reinstatement of their proceedings for the purpose of applying for adjustment of status under HRIFA with EOIR until the Service has adjudicated the adjustment application. Should the Service deny the application, or the alien fail to file the application before April 1, 2000, the Service will move to recalendar or reinstate the proceedings and the proceedings will be recalendared or reinstated by the Immigration Court or the Board, as appropriate. In the case of an application denied by the Service, the alien could seek reconsideration of the denied adjustment application in such recalendared or reinstated proceedings. This procedure simplifies the application process by directing all applications to one location and obviating the need to file motions to recalendar or reinstate proceedings.

What Happens If an Applicant Is the Subject of a Final Order of Exclusion, Deportation, or Removal?

An alien who is the subject of a final order of exclusion, deportation, or removal, and who has never filed an application for adjustment of status under section 902 of HRIFA with the Immigration Court, must file such application with the Service. However, if such alien has a motion to reopen or a motion to reconsider filed on or before May 12, 1999, pending before an Immigration Court or the Board, then the application for adjustment must be filed with the Immigration Court or with the Board, as appropriate. The mere filing of an application for adjustment of status under section 902 of HRIFA with the Service or the referral of a denied application to an Immigration Court does not stay the execution of the final order of removal. To request that execution of the final order be stayed by the Service, the alien must file an Application for Stay of Removal (Form

I-246), following the procedures set forth in 8 CFR 241.6. If the application is referred to the Immigration Court, and the Service does not grant a stay of execution of the final order, the alien must request that the Immigration Court or Board specifically grant a stay of execution of the final order of removal.

When Can an Application Be Filed?

For principal applicants, the application period for HRIFA benefits begins June 11, 1999, and ends on March 31, 2000.

For dependent applicants, the application period for HRIFA benefits begins June 11, 1999, and remains open indefinitely. As previously noted, the requisite familial relationship between the dependent applicant and the principal applicant must exist at the time the principal applicant becomes a permanent resident, and must continue at least until the dependent is granted adjustment of status.

What Forms and Other Documents Should Be Filed?

Each applicant for HRIFA adjustment of status benefits must file a separate Application to Register Permanent Residence or Adjust Status (Form I-485), accompanied by the required application fee and supporting documents described below. HRIFA applicants should complete Part 2 (Application Type) of that form by checking box "h—other" and writing "HRIFA—Principal" or "HRIFA—Dependent" next to that block. Each application must be accompanied by the required initial evidence, as follows:

- (1) A birth certificate or other record of birth;
- (2) A completed Biographic Information Sheet (Form G-325A) if the applicant is between 14 and 79 years of age;
- (3) A report of medical examination;
- (4) Two photographs as described in the Form I-485 instructions;
- (5) A copy of the applicant's Arrival-Departure Record (Form I-94) or other evidence of inspection and admission or parole into the United States, if applicable;
- (6) If the applicant is at least 14 years of age, a local police clearance from each jurisdiction where the alien has resided for 6 months or longer since arriving in the United States (although the regulation does allow this particular requirement to be waived under certain circumstances);
- (7) If the applicant is a principal applicant, one or more of the documents described in 8 CFR 245.15(f)(9) to establish presence in the United States on December 31, 1995;

(8) If the applicant is a principal applicant or the unmarried son or daughter of a principal applicant, one or more of the documents described in 8 CFR 245.15(f)(10) to establish continuity of physical presence in the United States since December 31, 1995;

(9) If the applicant is a principal applicant or the unmarried son or daughter of a principal applicant, a statement showing all departures from and arrivals in the United States since December 31, 1995;

(10) If the applicant is a principal applicant, evidence that he or she falls within one of the five groups of persons eligible for HRIFA adjustment as described in 8 CFR 245.15(f)(12);

(11) If the alien is applying as the spouse, child, or unmarried son or daughter of another HRIFA beneficiary, evidence of the relationship (for example, a marriage certificate); and

(12) If the applicant acquired Haitian nationality through naturalization in that country, a copy of his or her Haitian naturalization certificate.

Must the Applicant Be Fingerprinted?

Yes, if the applicant is 14 years of age or older. Upon receipt of the application, the Service will instruct the applicant regarding procedures for obtaining fingerprints through one of the Service's Application Support Centers (ASCs) or authorized Designated Law Enforcement Agencies (DLEAs) chosen specifically for that purpose. Those instructions will direct the applicant to the ASC or DLEA nearest the applicant's home and advise the applicant of the date(s) and time(s) fingerprinting services may be obtained. Applicants should not submit fingerprint cards as part of the initial filing.

Is There a Fee for Filing This Application?

HRIFA adjustment of status applications must be submitted with the fee required by 8 CFR 103.7(b)(1) for Form I-485 (currently \$220 for applicants 14 years of age or older, and \$160 for applicants under age 14). In addition, if the applicant is 14 years of age or older, he or she must submit the fee of \$25 to cover fingerprinting costs. If the application is submitted to the Nebraska Service Center, this \$25 fee must accompany the application being submitted to that Center. If the application is submitted to an Immigration Court or the Board of Immigration Appeals, the fees must be submitted to the appropriate local office of the Service in accordance with 8 CFR 3.31. An applicant who is deserving of the benefits of section 902 of HRIFA and

is unable to pay the filing fee may request a fee waiver in accordance with 8 CFR 103.7(c).

How and Where Should the Application Be Filed?

If the applicant is not in exclusion, deportation, or removal proceedings before an Immigration Court or the Board of Immigration Appeals, or if the applicant has had his or her case administratively closed or continued indefinitely, the application and attachments must be submitted by mail to: USINS Nebraska Service Center, P.O. Box 87245, Lincoln, NE 68501-7245.

If the applicant is in proceedings pending before an Immigration Court or the Board of Immigration Appeals, or if the applicant has a motion to reopen or motion to reconsider filed on or before May 12, 1999, pending before an Immigration Court or the Board, the application and attachments must be submitted to the Immigration Court with jurisdiction over the case or to the Board if the Board has jurisdiction. In cases before the Immigration Court or the Board, the application fee should be submitted to the Service pursuant to 8 CFR 3.31, as provided above. (If the motion to reopen or motion to reconsider is filed after May 12, 1999, jurisdiction over the application for adjustment of status under HRIFA lies with the Service, not with EOIR.)

Applications for adjustment of status under HRIFA may not be submitted to any other Service location or to any consular post.

Can Someone Else Sign the Application if the Applicant Is a Child or a Person Who Is Mentally Incompetent?

In accordance with 8 CFR 103.2(a)(2), an application may be signed by a parent or legal guardian if the applicant is under 14 years of age, and by a legal guardian if the applicant is mentally incompetent. However, a person who is under age 14 is not precluded from signing the application if he or she is capable of understanding the significance of the attestation.

Will an Applicant Filing an Application for Adjustment of Status With the Service Under HRIFA Be Required To Appear Before the Service for an Interview?

The decision whether to require an interview is solely within the discretion of the Service, which may elect to waive the interview of the applicant. The interim regulations provide that the Service may waive the interview if the application and supporting evidence, including Service records, verify that the alien is either clearly eligible or

clearly ineligible for adjustment of status. If the application is adjudicated without interview, a notice of the decision will be mailed to the applicant. When an interview is required, the application will be forwarded to the local Service office having jurisdiction over the applicant's place of residence. The applicant will be notified of the date and time to appear for the interview. If an applicant fails to appear for an interview, the application may be denied in accordance with existing regulations.

Can an Applicant Be Authorized To Work While the Application is Pending?

If the alien has already received work authorization under any other provision of the Act, that work authorization will not be affected by the filing of an application for adjustment of status under HRIFA or by the administrative closure of the exclusion, deportation, or removal proceeding to pursue relief pursuant to HRIFA. Furthermore, an applicant for adjustment under HRIFA is able to apply for, and be granted, an extension of any such employment authorization for which he or she remains eligible.

On December 14, 1998, the Service published a notice in the **Federal Register** at 63 FR 68799 which provided for an automatic extension until December 22, 1999, of the validity of certain Employment Authorization Documents (EADs) issued to Haitian nationals pursuant to the Deferred Enforced Departure (DED) program. This was done as a transitional measure to afford Haitian beneficiaries of DED the opportunity to apply for a HRIFA-based EAD. In accordance with that notice and subsequent guidance to Service field offices, the EADs covered by the automatic extension include those bearing an expiration date of December 22, 1998, or later, and either the notation "274a.12(A)(11)" under "provision of law" or the notation "A-11" under "category."

Any applicant for adjustment of status under HRIFA who wishes to obtain initial employment authorization, or continued employment authorization when his or her prior authorization expires, during the pendency of the adjustment of status application, may file an Application for Employment Authorization (Form I-765) with the Service.

For those applicants whose cases are supported by evidence which can be verified through Service records, this interim rule provides that employment authorization may be granted upon filing of the application for adjustment

and an application for employment authorization.

In all other cases, the Service will not grant applications for work authorization filed by HRIFA applicants until the application for adjustment is approved or has been pending for 180 days, whichever comes first. This approach is in keeping with section 902(c)(3) of HRIFA, which mandates approval of employment authorization if the adjustment application "is pending for a period exceeding 180 days," and has not been denied, and which authorizes, but does not mandate, approval of employment authorization if the application has been pending for fewer than 180 days.

The Service will emphasize the potential benefits of filing for adjustment of status and employment authorization concurrently during public information sessions that the Service will hold with local community groups. The Department believes that limiting employment authorization to these circumstances and to circumstances in which 180 days have elapsed since the filing of the application will both: (1) Discourage fraudulent applications filed simply as a way to gain work authorization, and (2) permit employment more promptly for those whose applications appear likely to be granted. However, in publishing this interim rule, the Department solicits the views of interested parties on this topic.

Can an Alien Submit an Application for Adjustment of Status If He or She Is Outside the United States?

No. The statute and regulations require that an alien must be physically present in the United States in order to properly file an application. However, a special provision at 8 CFR 245.15(t)(2) allows an otherwise-eligible alien who is outside the United States to submit a request for parole authorization. This special provision is similar to the one contained in the implementing regulations for NACARA. Because of the similarity in the two statutes, the Department has decided to treat the beneficiaries of NACARA and HRIFA in the same manner. These provisions, however, cannot and do not create any additional parole authority, because a parole can only be issued under the Attorney General's discretionary authority contained in section 212(d)(5) of the Act. The provisions merely specify that the requests be filed with, and adjudicated by, the director of the designated service center. For NACARA applications, the designated service center is the Texas Service Center; for HRIFA applications, it is the Nebraska

Service Center. The regulatory authority of the Director of the Nebraska Service Center to adjudicate such requests will expire on March 31, 2000.

An alien requesting parole under this special provision should attach photocopies of the documents the alien intends to file in support of his or her claim for eligibility for adjustment of status under HRIFA if the parole authorization is granted. Parole authorization may be granted, as a matter of discretion, if, upon review of the application for parole authorization and related documents, it is determined that the application for adjustment of status is likely to be approved once it has been properly filed. The alien would be allowed to file the application after being paroled into the country. Accordingly, an alien who is otherwise inadmissible must remain outside the United States until the request for parole authorization is approved. If the alien attempts to enter the United States without the parole authorization, he or she could be found inadmissible to, and removed from, the United States.

Can an Applicant Travel Outside the United States While the Application Is Pending?

Nothing in HRIFA authorizes the Service to allow an applicant to re-enter the United States without proper documents. If an applicant plans to leave the United States to go to any other country before a decision is made on his or her HRIFA adjustment application, he or she should contact the Service to request advance authorization for parole. If an applicant leaves the United States without such advance authorization, action on his or her HRIFA adjustment application may be terminated and the application may be denied. An applicant may also experience difficulty when returning to the United States if he or she does not have such advance authorization. Furthermore, any absence from the United States without an advance parole authorization issued prior to the alien's departure counts toward the 180-day aggregate time period that the applicant is allowed to be outside the United States.

What Is the Status of an Alien Who Is Under a Final Order of Exclusion, Deportation, or Removal and Who Departs From the United States?

Such alien would be a "self-deport" and would be subject to the inadmissibility provisions of section 212(a)(9) of the Act. This is true regardless of whether the alien obtained an Authorization for Parole of an Alien Into the United States (Form I-512)

prior to departure. While being inadmissible would not preclude the alien from being *paroled* into the United States, it would preclude the alien from being *admitted* to the United States or being granted an adjustment of status, unless the alien first applied for and was granted permission to reapply for admission into the United States.

How Can Such an Alien Apply for Permission to Reapply for Admission into the United States?

An alien needing such permission may file an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), in accordance with the instructions on that form. Form I-212 may be filed prior to the alien's departure. Persons needing such forms may obtain them through the Service's Forms Center at 1-800-870-3676.

What Documentation Will Be Issued If the Adjustment Application Is Approved?

After processing is completed, a notice of the decision will be mailed to the HRIFA applicant. Applicants should keep this notice for their records. If the application has been approved, a permanent resident card will be mailed separately to the applicant. To obtain temporary evidence of lawful permanent resident status, the applicant may present the original approval notice and his or her passport or other photo identification at his or her local Service office. The local Service office will issue temporary evidence of lawful permanent resident status after verifying the approval of the HRIFA adjustment of status application. If the applicant is not in possession of a passport in which such temporary evidence may be endorsed, he or she should also submit two photographs meeting Alien Documentation, Identification, and Telecommunication System (ADIT) specifications so that the Service may prepare and issue temporary evidence of lawful permanent residence status.

Is There Any Special Action That an Applicant Who Had Been in Exclusion, Deportation, or Removal Proceedings Must Take Once the Application Has Been Approved?

No. If the alien previously had been issued a final order of exclusion, deportation, or removal, such order shall automatically be deemed canceled as of the date of the approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall automatically be

deemed terminated as of the date of approval of the application for adjustment of status.

What Happens if an Application is Denied by the Service?

If the Service finds that an applicant is ineligible for adjustment of status under HRIFA, the Service will advise him or her of its determination and of the applicant's right to seek, and the procedures for seeking, consideration of the application by an immigration judge. Depending on the individual case circumstances, those procedures could take one of three different routes as follows:

(1) If exclusion, deportation, or removal proceedings had never been commenced, the Service will issue a Notice to Appear, thereby initiating removal proceedings during which the applicant may renew his or her application for adjustment under HRIFA before the Immigration Court. In such proceedings, an immigration judge shall adjudicate the renewed application.

(2) If exclusion, deportation, or removal proceedings had been initiated and later administratively closed, the Service will advise the alien of the Service's denial of the HRIFA adjustment application and will move the Immigration Court, or the Board if at the time of administrative closure the Board had jurisdiction over the case, to recalendar or reinstate the proceeding. The previously closed removal proceedings will then be recalendared by the Immigration Court, or reinstated by the Board, as appropriate.

(3) If a final order of exclusion, deportation, or removal had been issued, the Service, using Form I-290C, Notice of Certification, will refer its decision to deny the HRIFA adjustment application to the Immigration Court, which will adjudicate the application in proceedings designed solely for the purpose of such adjudication.

What Happens If an Application Is Denied by the Immigration Court?

If the Immigration Court denies the HRIFA adjustment application of an alien in exclusion, deportation, or removal proceedings before the Immigration Court, the decision may be appealed to the Board along with and under the same procedures as all other issues before the Immigration Court in those proceedings.

If the Immigration Court denies the HRIFA adjustment application of an alien whose case was remanded to the Immigration Court by the Board, the Immigration Court shall certify the decision to the Board for review.

If the Immigration Court denies the HRIFA adjustment application of an alien whose case was referred by the Service for a HRIFA-only inquiry, the alien shall have the right to appeal the decision to the Board, subject to the requirements in 8 CFR parts 3 and 240 governing appeals from Immigration Courts to the Board, including the requirements of filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR-26) and paying the filing fee.

What Happens If an Alien Fails To Appear for a Hearing Before the Immigration Court on a HRIFA Adjustment Application?

An alien must appear for all scheduled hearings before an Immigration Court, unless his or her appearance is waived by the Immigration Court. An alien who is in exclusion, deportation, or removal proceedings before the Immigration Court, and who fails to appear for a hearing regarding a HRIFA adjustment application, will be subject to the applicable statutory and regulatory *in absentia* procedures (i.e., section 242B of the Act as it existed prior to the amendments of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) on September 30, 1996, for deportation proceedings, and section 240 of the Act as amended by IIRIRA for removal proceedings).

What Rules of Procedure Apply in HRIFA-Only Hearings Conducted on Cases Referred by the Service to the Immigration Court?

Although an alien who is placed before the Immigration Court for a HRIFA-only hearing after referral to a Notice of Certification (Form I-290) to the Immigration Court by the Service is not specifically subject to the statutory and regulatory provisions governing exclusion, deportation, and removal proceedings, the Department has inserted language in this interim rule reflecting the standards in section 240 of the Act for removal proceedings, including the *in absentia* procedures. Absent specific statutory direction in this area, the procedures of section 240 of the Act were chosen because such procedures are similar to those from the pre-IIRIRA section 242B of the Act and indicate Congress' most recent preference to have procedures dealing with failures to appear for immigration proceedings. Use of the language from section 240 of the Act also ensures that the *in absentia* procedures used for those in HRIFA-only proceedings are consistent with the *in absentia*

procedures applicable to aliens who file HRIFA adjustment applications in ongoing removal and deportation proceedings.

As for those aliens who, upon reopening and remand by the Board to the Immigration Court, fail to file a HRIFA adjustment application with the Immigration Court, the immigration judge will certify the case back to the Board for consideration of the previously pending appeal or motion. If, prior to receiving a final order from the Board, the alien subsequently requests a remand to file a HRIFA adjustment application, the Board shall remand the case to the Immigration Court, unless the alien is clearly ineligible for such relief.

May an Applicant Who Receives a Final Determination by the Service, the Immigration Court, or the Board Denying His or Her Application of HRIFA Adjustment Appeal That Decision to a Federal Court?

No. While the regulations provide for various avenues for administrative review of negative HRIFA determinations, section 902(f) of HRIFA provides that "[a] determination by the Attorney General as to whether the status of any alien should be adjusted under [HRIFA] is final and shall not be subject to review by any court."

Good Cause Exception

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B). Section 902 of HRIFA became effective immediately upon enactment on October 21, 1998. Publication of this rule as an interim rule will expedite implementation of that section and allow Haitian nationals to apply for and obtain the benefits available to applicants for adjustment of status under HRIFA as soon as possible in light of the statutory application deadline of March 31, 2000.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule allows certain Haitian nationals to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is considered by the Department of Justice to be a

"significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988: Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The information collection requirement contained in this rule (Form I-485, Supplement C) was submitted to the Office of Management and Budget (OMB) for emergency review and approval under 5 CFR 1320.13(a)(1)(i) and (a)(2)(iii). In a notice published in the **Federal Register** on April 2, 1999 at 64 FR 15990, the Immigration and Naturalization Service notified the public of the proposed

information collection contained in Form I-485 Supplement C. The information collection requirement in this application will be used to determine whether an alien applying for adjustment of status under the provisions of section 902 of Division A, Title IX of Public Law 105-277 is eligible to become a permanent resident of the United States. The estimated total number of respondents is 50,000 and the amount of time estimated for an average respondent to respond is 30 minutes for a total public burden of 25,000 hours.

This information collection request has been approved by OMB and has an OMB Number of 1115-0229. The emergency approval is only valid for 180 days. Comments and suggestions concerning the information collection are encouraged and will be accepted until June 1, 1999. To obtain a copy of the collection instrument or to make comments on this information collection you may contact Mr. Richard A. Sloan, (202) 514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362, 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949-1953 Comp., p. 1002; section 203 of Pub. L. 105-100.

2. Section 3.1 is amended by revising paragraph (b)(12) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(12) Decisions of Immigration Judges on applications for adjustment of status referred on a Notice of Certification (Form I-290C) to the Immigration Court in accordance with §§ 245.13(n)(2) and 245.15(n)(3) of this chapter or remanded to the Immigration Court in accordance with §§ 245.13(d)(2) and 245.15(e)(2) of this chapter.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

4. Section 212.2 is amended by:

a. Removing the words "An applicant" and adding in their place the words "Except as provided in paragraph (g)(3) of this section, an applicant" in the first sentence in paragraph (d);

b. Removing the words "If the applicant" and adding in their place the words "Except as provided in paragraph (g)(3) of this section, if the applicant" in the second sentence in paragraph (d); and by

c. Adding a new paragraph (g)(3), to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal, or departure at Government expense.

* * * * *

(g) * * *

(3) If an alien who is an applicant for parole authorization under § 245.15(l) of this chapter requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, he or she may file the requisite Form I-212 or Form I-601 at the Nebraska Service Center concurrently with the Form I-131, Application for Travel Document.

* * * * *

5. Section 212.7 is amended by:

a. Adding a new paragraph (a)(1)(iii);

b. Removing the word "or" at the end of paragraph (b)(2)(ii);

c. Removing the period at the end of paragraph (b)(2)(iii) and inserting in its place a "; or"; and by

d. Adding a new paragraph (b)(2)(iv), to read as follows:

(a) * * *

(1) * * *

(iii) Parole authorization applicant under § 245.15(l). An applicant for parole authorization under § 245.15(l) of this chapter who is inadmissible and seeks a waiver under section 212(h) or (i) of the Act must file an application on Form I-601 with the Director of the Nebraska Service Center considering the Form I-131.

* * * * *

(b) * * *

(2) * * *

(iv) The Nebraska Service Center, if the alien is outside the United States and seeking parole authorization under § 245.15(l)(2) of this chapter.

* * * * *

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

6. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; sec. 202, Pub. L. 105-100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105-277, 112 Stat. 2681; 8 CFR part 2.

§ 240.1 [Amended]

7. In § 240.1, paragraph (a)(1)(ii) is amended in the first sentence by removing the words "and section 202 of Pub. L. 105-100" and adding in their place the words " , section 202 of Pub. L. 105-100, and section 902 of Pub. L. 105-277".

§ 240.11 [Amended]

8. In § 240.11, paragraph (a)(1) is amended in the first sentence by removing the words "or section 202 of Pub. L. 105-100," and adding in their place the words "section 202 of Pub. L. 105-100, or section 902 of Pub. L. 105-277,".

§ 240.31 [Amended]

9. Section 240.31 is amended in the first sentence by adding the phrase " , or section 902 of Pub. L. 105-277" immediately after the phrase "section 202 of Pub. L. 105-100".

§ 240.41 [Amended]

10. In § 240.41, paragraph (a) is amended in the first sentence by removing the words "and section 202 of Pub. L. 105-100" and adding in their place the words "section 202 of Pub. L. 105-100, and section 902 of Pub. L. 105-277".

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

11. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105-100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105-277, 112 Stat. 2681; 8 CFR part 2.

12. Section 245.15 is added to read as follows:

§ 245.15 Adjustment of Status of Certain Haitian Nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

(a) *Definitions.* As used in this section, the terms:

Abandoned and *abandonment* mean that prior to a child's 21st birthday both parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer these rights to any specific person(s).

Guardian means a person lawfully invested (by order of a competent Federal, State, or local authority) with the power, and charged with the duty, of taking care of, including managing the property, rights, and affairs of, a child.

Orphan and *orphaned* refer to the involuntary detachment or severance of a child from his or her parents prior to the child's 21st birthday due to any of the following:

- (1) The death of both parents;
- (2) The death of one parent and the irrevocable and written release of all parental rights by the sole surviving parent based upon the inability of that parent to provide proper care for the child;
- (3) The desertion by both parents, as that phrase is defined in § 204.3(b) of this chapter, or by the sole or surviving parent;
- (4) The disappearance of both parents, as that phrase is defined in § 204.3(b) of this chapter, or of the sole or surviving parent;
- (5) The loss from both parents, as that phrase is defined in § 204.3(b) of this chapter, or from the sole or surviving parent; or
- (6) The separation from both parents, as that phrase is defined in § 204.3(b) of this chapter, or from the sole or surviving parent.

Parent, father, or mother means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in paragraphs (A) through (E) of section 101(b)(1) of the Act.

(b) *Applicability of provisions of section 902 of HRIFA in general.* Section 902 of Division A of Pub. L. 105-277, the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), provides special rules for adjustment of status for certain nationals of Haiti, if they meet the other requirements of HRIFA.

(1) *Principal applicants.* Section 902(b)(1) of HRIFA defines five categories of principal applicants who may apply for adjustment of status, if the alien was physically present in the United States on December 31, 1995:

- (i) An alien who filed for asylum before December 31, 1995;
- (ii) An alien who was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest; or
- (iii) An alien who at the time of arrival in the United States and on December 31, 1995, was unmarried and under 21 years of age and who:

(A) Arrived in the United States without parents in the United States and has remained without parents in the United States since his or her arrival;

(B) Became orphaned subsequent to arrival in the United States; or

(C) Was abandoned by parents or guardians prior to April 1, 1998, and has remained abandoned since such abandonment.

(2) *Dependents.* Section 902(d) of HRIFA provides for certain Haitian nationals to apply for adjustment of status as the spouse, child, or unmarried son or daughter of a principal HRIFA beneficiary, even if the individual would not otherwise be eligible for adjustment under section 902. The eligibility requirements for dependents are described further in paragraph (d) of this section.

(c) *Eligibility of principal HRIFA applicants.* A Haitian national who is described in paragraph (b)(1) of this section is eligible to apply for adjustment of status under the provisions of section 902 of HRIFA if the alien meets the following requirements:

(1) *Physical presence.* The alien is physically present in the United States at the time the application is filed;

(2) *Proper application.* The alien properly files an application for adjustment of status in accordance with this section, including the evidence

described in paragraphs (h), (i), (j) and (k) of this section;

(3) *Admissibility.* The alien is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in paragraph (e) of this section; and

(4) *Continuous physical presence.* The alien has been physically present in the United States for a continuous period beginning on December 31, 1995, and ending on the date the application for adjustment is granted, except for the following periods of time:

- (i) Any period or periods of absence from the United States not exceeding 180 days in the aggregate; and
- (ii) Any periods of absence for which the applicant received an Advance Authorization for Parole (Form I-512) prior to his or her departure from the United States, provided the applicant returned to the United States in accordance with the conditions of such Advance Authorization for Parole.

(iii) Any periods of absence from the United States occurring after October 21, 1998, and before July 12, 1999, provided the applicant departed the United States prior to December 31, 1998.

(d) *Eligibility of dependents of a principal HRIFA beneficiary.* A Haitian national who is the spouse, child, or unmarried son or daughter of a principal beneficiary eligible for adjustment of status under the provisions of HRIFA is eligible to apply for benefits as a dependent, if the dependent alien meets the following requirements:

(1) *Physical presence.* The alien is physically present in the United States at the time the application is filed;

(2) *Proper application.* The alien properly files an application for adjustment of status as a dependent in accordance with this section, including the evidence described in paragraphs (h) and (l) of this section;

(3) *Admissibility.* The alien is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in paragraph (e) of this section;

(4) *Existence of relationship at time of adjustment.* The alien's qualifying relationship to the principal beneficiary existed at the time the principal beneficiary was granted adjustment of status and continues to exist at the time the dependent alien is granted adjustment of status; and

(5) *Continuous physical presence.* If the alien is applying as the unmarried son or unmarried daughter of a principal HRIFA beneficiary, he or she

must have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending on the date the application for adjustment is granted, as provided in paragraphs (c)(4) and (j) of this section.

(e) *Applicability of grounds of inadmissibility contained in section 212(a)*. (1) *Certain grounds of inadmissibility inapplicable to HRIFA applicants*. Paragraphs (4), (5), (6)(A), (7)(A) and (9)(B) of section 212(a) of the Act are inapplicable to HRIFA principal applicants and their dependents.

Accordingly, an applicant for adjustment of status under section 902 of HRIFA need not establish admissibility under those provisions in order to be able to adjust his or her status to that of permanent resident.

(2) *Availability of individual waivers*. If a HRIFA applicant is inadmissible under any of the other provisions of section 212(a) of the Act for which an immigrant waiver is available, the applicant may apply for one or more of the immigrant waivers of inadmissibility under section 212 of the Act, in accordance with § 212.7 of this chapter.

(f) *Time for filing of applications*. (1) *Applications for HRIFA benefits by a principal HRIFA applicant*. The application period begins on June 11, 1999. To benefit from the provisions of section 902 of HRIFA, an alien who is applying for adjustment as a principal applicant must properly file an application for adjustment of status before April 1, 2000.

(2) *Applications by dependent aliens*. The spouse, minor child, or unmarried son or daughter of an alien who is eligible for adjustment of status as a principal beneficiary under HRIFA may file an application for adjustment of status under this section concurrently with or subsequent to the filing of the application of the principal HRIFA beneficiary. An application filed by a dependent may not be approved prior to approval of the principal's application.

(g) *Jurisdiction for filing of applications*. (1) *Filing of applications with the Service*. The Service has jurisdiction over all applications for the benefits of section 902 of HRIFA as a principal applicant or as a dependent under this section, except for applications filed by aliens who are in pending immigration proceedings as provided in paragraph (g)(2) of this section. All applications filed with the Service for the benefits of section 902 of HRIFA must be submitted by mail to: USINS Nebraska Service Center, PO Box 87245, Lincoln, NE 68501-7245. After proper filing of the application, the

Service will instruct the applicant to appear for fingerprinting as prescribed in § 103.2(e) of this chapter. The Director of the Nebraska Service Center shall have jurisdiction over all applications filed with the Service for adjustment of status under section 902 of HRIFA, unless the Director refers the applicant for a personal interview at a local Service office as provided in paragraph (o)(1) of this section.

(2) *Filing of applications by aliens in pending exclusion, deportation, or removal proceedings*. An alien who is in exclusion, deportation, or removal proceedings pending before the Immigration Court or the Board, or who has a pending motion to reopen or motion to reconsider filed with the Immigration Court or the Board on or before May 12, 1999, must apply for HRIFA benefits to the Immigration Court or the Board, as provided in paragraph (p)(1) of this section, rather than to the Service. However, an alien whose proceeding has been administratively closed (see paragraph (p)(4) of this section) may only apply for HRIFA benefits with the Service as provided in paragraph (g)(1) of this section.

(3) *Filing of applications with the Service by aliens who are subject to a final order of exclusion, deportation, or removal*. An alien who is subject to a final order of exclusion, deportation, or removal, and who has not been denied adjustment of status under section 902 of HRIFA by the Immigration Court or the Board, may only apply for HRIFA benefits with the Service as provided in paragraph (g)(1) of this section. This includes applications for HRIFA benefits filed by aliens who have filed a motion to reopen or motion to reconsider a final order after May 12, 1999.

(i) *Stay of final order of exclusion, deportation, or removal*. The filing of an application for adjustment under section 902 of HRIFA with the Service shall not stay the execution of such final order unless the applicant has requested and been granted a stay in connection with the HRIFA application. An alien who has filed a HRIFA application with the Service may file an Application for Stay of Removal (Form I-246) in accordance with section 241(c)(2) of the Act and § 241.6 of this chapter.

(ii) *Grant of stay*. Absent evidence of the applicant's statutory ineligibility for adjustment of status under section 902 of HRIFA or significant negative discretionary factors, a Form I-246 filed by a bona fide applicant for adjustment under section 902 of HRIFA shall be approved and the removal of the applicant shall be stayed until such time

as the Service has adjudicated the application for adjustment in accordance with this section.

(h) *Application and supporting documents*. Each applicant for adjustment of status must file an Application to Register Permanent Residence or Adjust Status (Form I-485). An applicant should complete Part 2 of Form I-485 by checking box "h—other" and writing "HRIFA—Principal" or "HRIFA—Dependent" next to that block. Each application must be accompanied by:

(1) *Application fee*. The fee for Form I-485 prescribed in § 103.7(b)(1) of this chapter;

(2) *Fingerprinting fee*. If the applicant is 14 years of age or older, the fee for fingerprinting prescribed in § 103.7(b)(1) of this chapter;

(3) *Identifying information*.

(i) A copy of the applicant's birth certificate or other record of birth as provided in paragraph (m) of this section;

(ii) A completed Biographic Information Sheet (Form G-325A), if the applicant is between 14 and 79 years of age;

(iii) A report of medical examination, as specified in § 245.5 of this chapter; and

(iv) Two photographs, as described in the instructions to Form I-485;

(4) *Arrival-Departure Record*. A copy of the Form I-94, Arrival-Departure Record, issued at the time of the applicant's arrival in the United States, if the alien was inspected and admitted or paroled;

(5) *Police clearances*. If the applicant is 14 years of age or older, a police clearance from each municipality where the alien has resided for 6 months or longer since arriving in the United States. If there are multiple local law enforcement agencies (e.g., city police and county sheriff) with jurisdiction over the alien's residence, the applicant may obtain a clearance from either agency. If the applicant resides or resided in a State where the State police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient. If the applicant presents a letter from the local police agencies involved, or other evidence, to the effect that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy, the director or immigration judge having jurisdiction over the application may waive the local police clearance;

(6) *Proof of Haitian nationality*. If the applicant acquired Haitian nationality other than through birth in Haiti, a copy of the certificate of naturalization or

certificate of citizenship issued by the Haitian government; and

(7) *Additional supporting evidence.* Additional supporting evidence pertaining to the applicant as provided in paragraphs (i) through (l) of this section.

(i) *Evidence of presence in the United States on December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing the alien's presence in the United States on December 31, 1995. Such evidence may consist of one of the following kinds of documentation:

(1) *Form I-94.* A photocopy of the Form I-94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(2) *Form I-122.* A photocopy of the Form I-122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to December 31, 1995, placing the applicant in exclusion proceedings under section 236 of such Act (as in effect prior to April 1, 1997);

(3) *Form I-221.* A photocopy of the Form I-221, Order to Show Cause, issued by the Service on or prior to December 31, 1995, placing the applicant in deportation proceedings under section 242 or 242A of such Act (as in effect prior to April 1, 1997);

(4) *Other Service document.* A photocopy of any application or petition for a benefit under the Immigration and Nationality Act filed by or on behalf of the applicant on or prior to December 31, 1995, which establishes his or her presence in the United States, or a fee receipt issue by the Service for such application or petition;

(5) *Other government documentation.* Other documentation issued by a Federal, State, or local authority provided such other documentation bears the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), was dated at the time of issuance, and bears a date of issuance not later than December 31, 1995. For this purpose, the term *Federal, State, or local authority* includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

(i) A State driver's license;

(ii) A State identification card issued in lieu of a driver's license to a non-driver;

(iii) A county or municipal hospital record;

(iv) A public college or public school transcript;

(v) Income tax records;

(vi) A copy of a petition on behalf of the applicant which was submitted to the Service on or before December 31, 1995, and which lists the applicant as being physically present in the United States;

(vii) A certified copy of a Federal, State, or local governmental record which was created on or prior to December 31, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record; and

(viii) A certified copy of a Federal, State, or local governmental record which was created on or prior to December 31, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(6) *Private or religious school transcripts.* In the case of an applicant seeking classification as a child under section 902(b)(1)(C) of HRIFA, a transcript from a private or religious school which:

(i) Is registered with, or approved or licensed by, appropriate State or local authorities;

(ii) Is accredited by the State or regional accrediting body, or by the appropriate private school association; or

(iii) Maintains enrollment records in accordance with State or local requirements or standards.

(j) *Evidence of continuity of presence in the United States since December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant, or as the unmarried son or daughter of a principal applicant, must provide with the application evidence establishing continuity of the alien's physical presence in the United States since December 31, 1995. (This requirement does not apply to a dependent seeking HRIFA benefits as the spouse or minor child of a principal applicant.)

(1) *Evidence establishing presence.* Evidence establishing the continuity of the alien's physical presence in the United States since December 31, 1995, may consist of any documentation issued by any governmental or non-governmental authority, provided such evidence bears the name of the applicant, was dated at the time it was

issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority, if the document would normally contain such authenticating instrument. In general, there should be no chronological gaps in such documentation exceeding 90 days in length, excluding periods when the applicant states that he or she was not physically present in the United States. Such documentation need not bear the seal of the issuing authority.

(2) *Examples.* Documentation establishing continuity of physical presence may include, but is not limited to:

(i) School records;

(ii) Rental receipts;

(iii) Utility bill receipts;

(iv) Any other dated receipts;

(v) Personal checks written by the applicant bearing a dated bank cancellation stamp;

(vi) Employment records, including pay stubs;

(vii) Credit card statements showing the dates of purchase, payment, or other transaction;

(viii) Certified copies of records maintained by organizations chartered by the Federal or State government, such as public utilities, accredited private and religious schools, and banks;

(ix) If the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing presence of another member of that same family unit; and

(x) For applicants who have had ongoing correspondence or other interaction with the Service, a list of the types and dates of such correspondence or other contact that the applicant knows to be contained or reflected in Service records.

(3) *Evidence relating to absences from the United States since December 31, 1995.* If the alien is applying as a principal applicant, or as the unmarried son or daughter of a principal applicant, and has departed from and returned to the United States since December 31, 1995, the alien must provide with the application an attachment on a plain piece of paper showing:

(i) The date of the applicant's last arrival in the United States before December 31, 1995;

(ii) The date of each departure (if any) from the United States since that arrival;

(iii) The reason for each departure; and

(iv) The date, manner, and place of each return to the United States.

(k) *Evidence establishing the alien's eligibility under section 902(b) of*

HRIFA. An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing that the alien satisfies one of the eligibility standards described in paragraph (b)(1) of this section.

(1) *Applicant for asylum.* If the alien is a principal applicant who filed for asylum before December 31, 1995, the applicant must provide with the application either:

(i) A photocopy of the first page of the Application for Asylum and Withholding of Removal (Form I-589); or

(ii) If the alien is not in possession of a photocopy of the first page of the Form I-589, a statement to that effect giving the date of filing and the location of the Service office or Immigration Court at which it was filed;

(2) *Parolee.* If the alien is a principal applicant who was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest, the applicant must provide with the application either:

(i) A photocopy of the Arrival-Departure Record (Form I-94) issued when he or she was granted parole; or

(ii) If the alien is not in possession of the original Form I-94, a statement to that effect giving the date of parole and the location of the Service port-of-entry at which parole was authorized.

(3) *Child without parents.* If the alien is a principal applicant who arrived in the United States as a child without parents in the United States, the applicant must provide with the application:

(i) Evidence, such as Form I-94, showing the date, location, and manner of his or her arrival in the United States; and

(ii) Evidence establishing the absence of the child's parents, which may include either:

(A) Evidence showing the deaths of, or disappearance or desertion by, the applicant's parents; or

(B) Evidence showing that the applicant's parents did not arrive in the United States with or before the applicant and that neither of the applicant's parents subsequently arrived in the United States. Such evidence may include, but is not limited to, documentation showing that the applicant's parents have been continuously employed outside the United States, are deceased, disappeared or abandoned the applicant prior to the applicant's arrival, or were otherwise engaged in activities showing that they were not in the United States.

(4) *Orphaned child.* If the alien is a principal applicant who is or was a child who became orphaned subsequent to arrival in the United States, the applicant must provide with the application:

(i) Evidence, such as Form I-94, showing the date, location, and manner of his or her arrival in the United States; and

(ii) Either:

(A) The death certificates of both parents (or in the case of a child having only one parent, the death certificate of the sole parent) showing that the death or deaths occurred after the date of the applicant's arrival in the United States, or

(B) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing the disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent).

(5) *Abandoned child.* If the alien is a principal applicant who was abandoned by parents or guardians prior to April 1, 1998, and has remained abandoned since such abandonment, the applicant must provide with the application:

(i) Evidence, such as Form I-94, showing the date, location, and manner of his or her arrival in the United States; and

(ii) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing such abandonment.

(1) *Evidence relating to applications by dependents under section 902(d) of HRIFA.* (1) *Evidence of spousal relationship.* If the alien is applying as the spouse of a principal HRIFA beneficiary, the applicant must provide with the application a copy of their certificate of marriage and copies of documents showing the legal termination of all other marriages by the applicant or the other beneficiary.

(2) *Evidence of parent-child relationship.* If the applicant is applying as the child, unmarried son, or unmarried daughter of a principal HRIFA beneficiary, and the principal beneficiary is not the applicant's biological mother, the applicant must provide with the application evidence to demonstrate the parent-child relationship between the principal beneficiary and the applicant. Such evidence may include copies of the applicant's parent's marriage certificate and documents showing the legal termination of all other marriages, an

adoption decree, or other relevant evidence.

(m) *Secondary evidence.* If the primary evidence required in paragraph (h)(3)(i), (l)(1) or (l)(2) of this section is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish birth, marriage, or other relevant event. Documentary evidence establishing that primary evidence is unavailable must accompany secondary evidence of birth or marriage in the home country. In adjudicating the application for adjustment of status under section 902 of HRIFA, the Service or immigration judge shall determine the weight to be given such secondary evidence. Secondary evidence may not be submitted in lieu of the documentation specified in paragraphs (i) and (j) of this section. However, subject to verification by the Service, if the documentation specified in paragraphs (i) and (j) is already contained in the Service's file relating to the applicant, the applicant may submit an affidavit to that effect in lieu of the actual documentation.

(n) *Authorization to be employed in the United States while the application is pending.* (1) *Application for employment authorization.* An applicant for adjustment of status under section 902 of HRIFA who wishes to obtain initial or continued employment authorization during the pendency of the adjustment application must file an Application for Employment Authorization (Form I-765) with the Service, including the fee as set forth in § 103.7(b)(1) of this chapter. The applicant may submit Form I-765 either concurrently with or subsequent to the filing of the application for HRIFA benefits on Form I-485.

(2) *Adjudication and issuance.* Employment authorization may not be issued to an applicant for adjustment of status under section 902 of HRIFA until the adjustment application has been pending for 180 days, unless the Director of the Nebraska Service Center verifies that Service records contain evidence that the applicant meets the criteria set forth in section 902(b) or 902(d) of HRIFA, and determines that there is no indication that the applicant is clearly ineligible for adjustment of status under section 902 of HRIFA, in which case the Director may approve the application for employment authorization, and issue the resulting document, immediately upon such verification. If the Service fails to

adjudicate the application for employment authorization upon expiration of the 180-day waiting period, or within 90 days of the filing of application for employment authorization, whichever comes later, the alien shall be eligible for interim employment authorization in accordance with § 274a.13(d) of this chapter. Nothing in this section shall preclude an applicant for adjustment of status under HRIFA from being granted an initial employment authorization or an extension of employment authorization under any other provision of law or regulation for which the alien may be eligible.

(o) *Adjudication of HRIFA applications filed with the Service.* (1) *Referral for interview.* Except as provided in paragraphs (o)(2) and (o)(3) of this section, all aliens filing applications for adjustment of status with the Service under this section must be personally interviewed by an immigration officer at a local office of the Service. If the Director of the Nebraska Service Center determines that an interview of the applicant is necessary, the Director shall forward the case to the appropriate local Service office for interview and adjudication.

(2) *Approval without interview.* Upon examination of the application, including all other evidence submitted in support of the application, all relevant Service records and all other relevant law enforcement indices, the Director may approve the application without an interview if the Director determines that:

(i) The alien's claim to eligibility for adjustment of status under section 902 of HRIFA is verified through existing Service records; and

(ii) The alien is clearly eligible for adjustment of status.

(3) *Denial without interview.* If, upon examination of the application, all supporting documentation, all relevant Service records, and all other relevant law enforcement indices, the Director determines that the alien is clearly ineligible for adjustment of status under HRIFA and that an interview of the applicant is not necessary, the Director may deny the application.

(p) *Adjudication of HRIFA applications filed in pending exclusion, deportation, or removal proceedings.* (1) *Proceedings pending before an Immigration Court.* Except as provided in paragraph (p)(4) of this section, the Immigration Court shall have sole jurisdiction over an application for adjustment of status under this section filed by an alien who is in exclusion, deportation, or removal proceedings pending before an immigration judge or

the Board, or who has a pending motion to reopen or motion to reconsider filed with an immigration judge or the Board on or before May 12, 1999. The immigration judge having jurisdiction over the exclusion, deportation, or removal proceedings shall have jurisdiction to accept and adjudicate any application for adjustment of status under section 902 of HRIFA during the course of such proceedings. All applications for adjustment of status under section 902 of HRIFA filed with an Immigration Court shall be subject to the requirements of §§ 3.11 and 3.31 of this chapter.

(2) *Motion to reopen or motion to reconsider.* If an alien who has a pending motion to reopen or motion to reconsider timely filed with an immigration judge on or before May 12, 1999, files an application for adjustment of status under section 902 of HRIFA, the immigration judge shall reopen the alien's proceedings for consideration of the adjustment application, unless the alien is clearly ineligible for adjustment of status under section 902 of HRIFA.

(3) *Proceedings pending before the Board.* Except as provided in paragraph (d)(4) of this section, in the case of an alien who either has a pending appeal with the Board or has a pending motion to reopen or motion to reconsider timely filed with the Board on or before May 12, 1999, the Board shall remand, or reopen and remand, the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 902 of HRIFA, unless the alien is clearly ineligible for adjustment of status under section 902 of HRIFA. If the immigration judge denies, or the alien fails to file, the application for adjustment of status under section 902 of HRIFA, the immigration judge shall certify the decision to the Board for consideration in conjunction with the applicant's previously pending appeal or motion.

(4) *Administrative closure of exclusion, deportation, or removal proceedings.* (i) An alien who is in exclusion, deportation, or removal proceedings, or who has a pending motion to reopen or a motion to reconsider such proceedings filed on or before May 12, 1999, may request that the proceedings be administratively closed, or that the motion be indefinitely continued, in order to allow the alien to file such application with the Service as prescribed in paragraph (g) of this section. If the alien appears to be eligible to file an application for adjustment of status under this section, the Immigration Court or the Board (whichever has jurisdiction) shall, with

the concurrence of the Service, administratively close the proceedings or continue indefinitely the motion.

(ii) In the case of an otherwise-eligible alien whose exclusion, deportation, or removal proceedings have been administratively closed for reasons not specified in this section, the alien may only apply before the Service for adjustment of status under this section.

(q) *Approval of HRIFA applications.*

(1) *Applications approved by the Service.* If the Service approves the application for adjustment of status under the provisions of section 902 of HRIFA, the director shall record the alien's lawful admission for permanent residence as of the date of such approval and notify the applicant accordingly. The director shall also advise the alien regarding the delivery of his or her Permanent Resident Card and of the process for obtaining temporary evidence of alien registration. If the alien had previously been issued a final order of exclusion, deportation, or removal, such order shall be deemed canceled as of the date of the director's approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall be deemed terminated as of the date of approval of the application for adjustment of status by the director.

(2) *Applications approved by an immigration judge or the Board.* If an immigration judge or (upon appeal) the Board grants an application for adjustment under the provisions of section 902 of HRIFA, the date of the alien's lawful admission for permanent residence shall be the date of such grant.

(r) *Review of decisions by the Service denying HRIFA applications.* (1) *Denial notification.* If the Service denies the application for adjustment of status under the provisions of section 902 of HRIFA, the director shall notify the applicant of the decision and of any right to renew the application in proceedings before the Immigration Court.

(2) *Renewal of application for HRIFA benefits in removal, deportation, or exclusion proceedings.* An alien who is not the subject of a final order of removal, deportation, or exclusion may renew his or her application for adjustment under section 902 of HRIFA during the course of such removal, deportation, or exclusion proceedings.

(i) *Initiation of removal proceedings.*

In the case of an alien who is not maintaining valid nonimmigrant status and who had not previously been placed in exclusion, deportation, or

removal proceedings, the director shall initiate removal proceedings in accordance with § 239.1 of this chapter.

(ii) *Recalendaring or reinstatement of prior proceedings.* In the case of an alien whose previously initiated exclusion, deportation, or removal proceeding had been administratively closed or continued indefinitely under paragraph (p)(4) of this section, the director shall make a request for recalendaring or reinstatement to the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, when the application has been denied. The Immigration Court or the Board will then recalendar or reinstate the prior exclusion, deportation, or removal proceeding.

(iii) *Filing of renewed application.* A principal alien may file a renewed application for HRIFA benefits with the Immigration Court either before or after March 31, 2000, if he or she had filed his or her initial application for such benefits with the Service on or before March 31, 2000. A dependent of a principal applicant may file such renewed application with the Immigration Court either before or after March 31, 2000, regardless of when he or she filed his or her initial application for HRIFA benefits with the Service.

(3) *Aliens with final orders.* In the case of an alien who is the subject of an outstanding final order of exclusion, deportation, or removal, the Service shall refer the decision to deny the application by filing a Notice of Certification (Form I-290C) with the Immigration Court that issued the final order for consideration in accordance with paragraph (s) of this section.

(s) *Action on decisions referred to the Immigration Court by a Notice of Certification (Form I-290C).* (1) *General.* Upon the referral by a Notice of Certification (Form I-290C) of a decision to deny the application, in accordance with paragraph (r)(3) of this section, the immigration judge shall conduct a hearing, under the authority contained in § 3.10 of this chapter, to determine whether the alien is eligible for adjustment of status under section 902 of HRIFA. Such hearing shall be conducted under the same rules of procedure as proceedings conducted under part 240 of this chapter, except the scope of review shall be limited to a determination of the alien's eligibility for adjustment of status under section 902 of HRIFA. During such proceedings,

all parties are prohibited from raising or considering any unrelated issues, including, but not limited to, issues of admissibility, deportability, removability, and eligibility for any remedy other than adjustment of status under section 902 of HRIFA. Should the alien fail to appear for such hearing, the immigration judge shall deny the application for adjustment under section 902 of HRIFA.

(2) *Stay pending review.* When the Service refers a decision to the Immigration Court on a Notice of Certification (Form I-290C) in accordance with paragraph (r)(3) of this section, the referral shall not stay the execution of the final order. Execution of such final order shall proceed unless a stay of execution is specifically granted by the immigration judge, the Board, or an authorized Service officer.

(3) *Appeal of Immigration Court decision.* Once the immigration judge issues his or her decision on the application, either the alien or the Service may appeal the decision to the Board. Such appeal must be filed pursuant to the requirements for appeals to the Board from an Immigration Court decision set forth in §§ 3.3 and 3.8 of this chapter.

(4) *Rescission or reopening of the decision of an Immigration Court.* The decision of an Immigration Court under paragraph (s)(1) of this section denying an application for adjustment under section 902 of HRIFA for failure to appear may be rescinded or reopened only:

(i) Upon a motion to reopen filed within 180 days after the date of the denial if the alien demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act; or

(ii) Upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice of the hearing in person (or, if personal service was not practicable, through service by mail to the alien or to the alien's counsel of record, if any) or the alien demonstrates that he or she was in Federal or State custody and the failure to appear was through no fault of the alien.

(t) *Parole authorization for purposes of travel.* (1) *Travel from and return to the United States while the application for adjustment of status is pending.* If an applicant for benefits under section 902 of HRIFA desires to travel outside, and

return to, the United States while the application for adjustment of status is pending, he or she must file a request for advance parole authorization on an Application for Travel Document (Form I-131), with fee as set forth in § 103.7(b)(1) of this chapter and in accordance with the instructions on the form. If the alien is either in deportation or removal proceedings, or subject to a final order of deportation or removal, the Form I-131 must be submitted to the Director, Office of International Affairs; otherwise the Form I-131 must be submitted to the Director of the Nebraska Service Center, who shall have jurisdiction over such applications. Unless the applicant files an advance parole request prior to departing from the United States, and the Service approves such request, his or her application for adjustment of status under section 902 of HRIFA is deemed to be abandoned as of the moment of his or her departure. Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

(2) *Parole authorization for the purpose of filing an application for adjustment of status under section 902 of HRIFA.*

(i) An otherwise eligible applicant who is outside the United States and wishes to come to the United States in order to apply for benefits under section 902 of HRIFA may request parole authorization for such purpose by filing an Application for Travel Document (Form I-131) with the Nebraska Service Center, at P.O. Box 87245, Lincoln, NE 68501-7245. Such application must be supported by a photocopy of the Form I-485 that the alien will file once he or she has been paroled into the United States. The applicant must include photocopies of all the supporting documentation listed in paragraph (f) of this section, except the filing fee, the medical report, the fingerprint card, and the local police clearances.

(ii) If the Director of the Nebraska Service Center is satisfied that the alien will be eligible for adjustment of status once the alien has been paroled into the United States and files the application, he or she may issue an Authorization for Parole of an Alien into the United States (Form I-512) to allow the alien to travel to, and be paroled into, the United States for a period of 60 days.

(iii) The applicant shall have 60 days from the date of parole to file the application for adjustment of status. If the alien files the application for adjustment of status within that 60-day period, the Service may re-parole the alien for such time as is necessary for adjudication of the application. Failure to file such application for adjustment of status within 60 days shall result in the alien being returned to the custody of the Service and being examined as an arriving alien applying for admission. Such examination will be conducted in accordance with the provisions of section 235(b)(1) of the Act if the alien is inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act, or section 240 of the Act if the alien is inadmissible under any other grounds.

(iv) Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act. The authority of the Director of the Nebraska Service Center to authorize parole from outside the United States under this provision shall expire on March 31, 2000.

(3) *Effect of departure on an outstanding warrant of exclusion, deportation, or removal.* If an alien who is the subject of an outstanding final order of exclusion, deportation, or removal departs from the United States, with or without an advance parole authorization, such final order shall be executed by the alien's departure. The execution of such final order shall not preclude the applicant from filing an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) in accordance with § 212.2 of this chapter.

(u) *Tolling the physical presence in the United States provision for certain*

individuals. (1) Departure with advance authorization for parole. In the case of an alien who departed the United States after having been issued an Authorization for Parole of an Alien into the United States (Form I-512), and who returns to the United States in accordance with the conditions of that document, the physical presence in the United States requirement of section 902(b)(1) of HRIFA is tolled while the alien is outside the United States pursuant to the issuance of the Form I-512.

(2) *Request for parole authorization from outside the United States.* In the case of an alien who is outside the United States and submits an application for parole authorization in accordance with paragraph (l)(2) of this section, and such application for parole authorization is granted by the Service, the physical presence requirement contained in section 902(b)(1) of HRIFA is tolled from the date the application is received at the Nebraska Service Center until the alien is paroled into the United States pursuant to the issuance of the Form I-512.

(3) *Departure without advance authorization for parole.* In the case of an otherwise-eligible applicant who departed the United States on or before December 31, 1998, the physical presence in the United States provision of section 902(b)(1) of HRIFA is tolled as of October 21, 1998, and until July 12, 1999.

(v) *Judicial review of HRIFA adjustment of status determinations.* Pursuant to the provisions of section 902(f) of HRIFA, there shall be no judicial appeal or review of any administrative determination as to whether the status of an alien should be

adjusted under the provisions of section 902 of HRIFA.

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

13. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

§ 274a.12 [Amended]

14. In § 274a.12, paragraph (c)(9) is amended in the second sentence by removing the words “§ 245.13(j) of this chapter” and adding in their place the words “§§ 245.13(j) and 245.15(k) of this chapter”.

§ 274a.13 [Amended]

15. In § 274a.13, paragraph (d) is amended in the first sentence by removing the words “in so far as it is governed by § 245.13(j) of this chapter” and adding in their place the words “insofar as it is governed by §§ 245.13(j) and 245.15(k) of this chapter”.

PART 299—IMMIGRATION FORMS

16. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

17. Section 299.1 is amended in the table by:

- a. Revising the entry for Form “I-290C”, and by
- b. Adding the entry for Form “I-485 Supplement C” in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * * * *		
I-290C	02-01-99	Notice of Certification.
* * * * *		
I-485 Supplement C	04-01-99	HRIFA Supplement to Supplement C Form I-485 Instructions.
* * * * *		

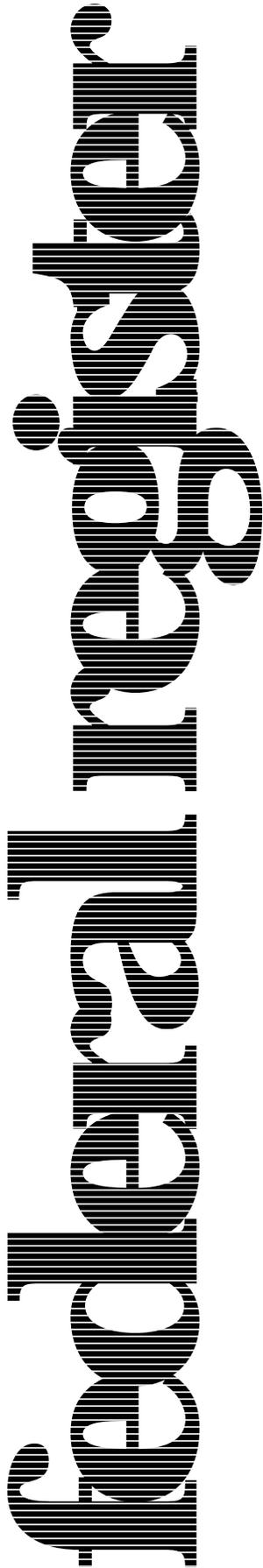
18. Section 299.5 is amended in the table by adding the entry for Form “I-485 Supplement C” in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OBM Control No.
*	*	*
I-485 Supplement C	HRIFA Supplement to Form I-485 Instructions	1115-0229
*	*	*

Dated: May 6, 1999.
Janet Reno,
Attorney General.
 [FR Doc. 99-11954 Filed 5-11-99; 8:45 am]
BILLING CODE 4410-10-U



Wednesday
May 12, 1999

Part VIII

**Department of
Health and Human
Services**

Office of Public Health and Science;
Announcement of Availability of Grants
for Adolescent Family Life Demonstration
Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for *care, prevention* and *combination care/prevention* grants under the Adolescent Family Life (AFL) Demonstration Projects Program. These Title XX grants are for community-based and community-supported demonstration projects to: (1) find effective means of preventing pregnancy by encouraging adolescents to abstain from sexual activity through provision of age-appropriate education on sexually and decision-making skills, and (2) establish comprehensive and integrated approaches to the delivery of services to pregnant adolescents, adolescent parents and their children.

The Title XX statute contains a provision limiting the amount of AFL funding which may be used for prevention projects to not more than one-third of the overall monies available for demonstration projects. In the Fiscal Year (FY) 1997 and 1998 appropriations for Title XX, as amended, Congress waived this limitation by enacting legislation which earmarked the majority of AFL demonstration funding for prevention grants, specifically abstinence education projects as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Although the Senate Committee report accompanying the FY 1999 appropriations act indicates that continued funding of more prevention projects is the intent of Congress, the FY 1999 appropriation for Title XX does not contain a similar provision waiving the statutory limit. In order to continue to fund a larger number of prevention projects than is allowable under the statute, the Department has asked Congress to amend the FY 1999 appropriation for Title XX to include a waiver of the "not more than one-third for prevention" restriction. The Department expects that such a waiver will be enacted.

Thus, new care, prevention and combination care/prevention projects under this announcement will only be funded if the amendment to the FY 1999 appropriations act does *not* pass. If this amendment is enacted before the end of

the fiscal year, funds will not be available to support new projects under this announcement. In the event FY 1999 funds are not available for new care, prevention and combination care/prevention projects, applications will be held for review and consideration in the following fiscal year, although the availability of funding in FY 2000 is uncertain.

To ensure that there are adequate applications which could be funded in the event the amendment is enacted, the Department is also publishing a separate notice in the **Federal Register** announcing the availability of funds for prevention demonstration projects. Such applications would be considered for funding in the event the amendment described above is enacted.

If the amendment to the FY 1999 appropriation for Title XX is not enacted, funds will be available for approximately 40 projects (25 care projects and 15 prevention projects), which may be located in any State, the District of Columbia, the territories of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands and the Federated States of Micronesia.

DATES: The closing date for this grant announcement is June 28, 1999. Applications will be considered as meeting the deadline if they are postmarked on or before the closing date. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 a.m. and 5:00 p.m. on or before the above closing date. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant. *Applications will not be accepted by fax or e-mail. The submission deadline will not be extended.*

ADDRESSES: Application kits consisting of the appropriate forms, a copy of the Title XX legislation, and guidance on the preparation of the application may be downloaded from the following Internet address: www.hhs.gov/progorg/opa/titlexx/oapp.html. If you do not have access to the Internet, you may obtain a kit from the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. Written requests for application kits may be faxed to (301) 594-5981. *All completed applications must be*

submitted to the Grants Management Office at the above mailing address. In preparing the application, it is important to follow ALL instructions contained in the application kit.

FOR FURTHER INFORMATION CONTACT: The OAPP Program Office at (301) 594-4004. Staff is available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z. *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 93.995) Title XX authorizes grants for three types of demonstration projects: (1) projects which provide "care services" only (*i.e.*, services for the provisions of care to pregnant adolescents, adolescent parents and their families); (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent sexual relations); and (3) projects which provide a combination of care and prevention services.

Under this program announcement, OAPP intends to make available approximately \$12 million to support an estimated 40 new demonstration projects (25 care projects and 15 prevention projects). An applicant may submit a proposal for a *local* care, prevention or combination care/prevention project. The awards for care projects will range from \$250,000 to \$350,000. The awards for prevention projects will range from \$150,000 to \$250,000. Funding for combination care/prevention projects may be higher if in proportion to the effort proposed.

Grants may be approved for project periods of up to five years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifth year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services.

We encourage application from experienced organizations which are currently operating programs and which

have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.

The specific services which may be funded under Title XX are listed below under Care Programs and Prevention Programs. Applicants who propose to provide a Combination of Care and Prevention Services Program must meet the requirements for each type of program.

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). These information collections have been approved by OMB under control number 0937-0189.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which are determined to demonstrate the capability of providing the proposed services and meet the statutory requirements.

Care Programs

Under this announcement, funds are available for local care demonstrations only. The project site must be identified in the application rather than selected after the grant is awarded.

Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger and for their families. This includes young fathers and their families.

The OAPP encourages the submission of care applications which propose to do the following: (1) Add care services to supplement existing adolescent health services in school, hospital or other community settings, (2) provide care services to minority or other disadvantaged population, (3) continue services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally, (4) stress self-sufficiency skills, such as school completion (in mainstream or alternative schools and GED programs) and/or job training preparation and placement, and (5) involve males and promote male responsibility. Applicants should base

their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration and linkages among such existing programs.

Applicants for care projects are required to provide, either directly or by referral, the following 10 core services:

- (1) Pregnancy testing and maternity counseling;
- (2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;
- (3) Primary and preventive health services, including prenatal and postnatal care;
- (4) Nutrition information and counseling;
- (5) Referral for screening and treatment of STDs;
- (6) Referral to appropriate pediatric care;
- (7) Educational services relating to family life problems associated with adolescent premarital sexual relations including:
 - (a) Information about adoption,
 - (b) Education on the responsibilities of sexuality and parenting.
 - (c) The development of material to support the role of parents as the providers of sex education, and
 - (d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;
- (8) Appropriate educational and vocational services;
- (9) Mental health services and referral to mental health services and to other appropriate physical health services; and
- (10) Counseling and referral for family planning services.

Note: Funds provided under Title XX may not be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community. In accordance with sec. 3006(a)(17) of Title XX (42 U.S.C. 300z-5(a)(17)), applicants must make maximum use of services available under the Title X Family Planning Program in providing this required core service.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

- (1) Referral to licensed residential care or maternity home services;
- (2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education and homemaking;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

Prevention Programs

Under this announcement, funds are available for local prevention projects only. The project site must be identified in the application rather than selected after the grant is awarded.

The primary purpose of prevention programs is to find effective means of reaching adolescents, both male and female, before they become sexually active to encourage them to abstain from sexual activity. There is general agreement that early initiation of sexual activity brings not only the risk of unintended pregnancy but also substantial health risks to adolescents, primarily infection from sexually transmitted diseases (STDs), including HIV. Accordingly, applicants must provide services that help pre-adolescents and young adolescents acquire knowledge and skills that will instill healthy attitudes and encourage and support the postponement of early sexual activity. Any information provided for adolescents who may be or become sexually active, which relates to reducing the risk of unintended pregnancy and disease, must be medically accurate and must be presented within the context that abstinence is the best choice and is what the project recommends.

Under this announcement, applicants may propose to develop and test new and/or innovative approaches aimed at promoting and fostering abstinence among adolescents. These approaches may consist of a variety of activities such as health, social, cultural, educational, economic and recreational activities, or combinations of all of these. Applicants may also propose to develop and test new prevention curricula and materials, update existing curricula, use existing educational materials/curricula, or use any combination of these materials, to implement their prevention demonstration projects. However, all materials and activities must be within the scope of the Title XX services listed below.

OAPP encourages the submission of prevention applications which propose to do the following: (1) Add prevention services to supplement existing adolescent health education programs or health service programs in school or

other community settings, (2) provide prevention services to minority or other disadvantaged populations, (3) include medically accurate information on sexuality, contraception, sexually transmitted diseases (STDs) and HIV/AIDS, (4) offer educational services to parents to assist them in communicating with their children about sexuality, contraception, STDs and HIV/AIDS, and (5) involve males and promote male responsibility.

Under the statutory requirements of Title XX, applicants for prevention programs are not required to provide any specific array of services; a proposal may include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

- (a) Information about adoption,
- (b) Education on the responsibilities of sexuality and parenting,
- (c) The development of material to support the role of parents as the providers of sex education, and
- (d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person:

- (4) Transportation;
- (5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors;
- (6) Referral for screening and treatment of STDs;
- (7) Pregnancy testing and maternity counseling; and
- (8) Nutrition information and counseling.

Combination Care and Prevention Services Programs

Applicants proposing to provide both care and prevention services must meet the requirements for both categories as described above. They must also propose to make a substantial effort in each of the two areas and indicate clearly in the application and budget the proportion of effort to be expended in each component.

It should be noted that, in all Title XX programs, including care, prevention and combination care/prevention programs, grantees may not teach or promote religion in their AFL projects. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation. All programming activities and program

curriculum materials must contain medically accurate information, and must remain neutral on abortion. Upon approval for funding, all curricula and related educational materials must be submitted to OAPP for review and approval prior to use in AFL project.

In addition, Under sec. 2011(a) of the Act, AFL projects may not provide abortions or abortion counseling or referral either directly or through sub-contract and may not advocate, promote or encourage abortion. However, if both the adolescent and her parents request abortion counseling, a project may provide referral for such counseling.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding level. All project evaluations should monitor program processes to determine whether the program has been carried out as planned and measure the program's outcomes. Waivers of the five percent limit on evaluation may be granted in cases where a more rigorous or comprehensive evaluation effort is proposed (see sec. 2006(b)(1)).

Section 2006(b)(2) of Title XX requires that the evaluations required by sec. 2006(b)(1) be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluations, each grantee shall develop a working relationship with a college or university located in the grantee's state which will provide or assist in providing monitoring and evaluation of services. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the intervention, development of the evaluation hypothesis(es), identification of the variables to be measured and a timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis. In the preparation of the application for Title XX funds, OAPP encourages applicants to work with the proposed evaluator to ensure that the evaluation plan is detailed and consistent with the project's proposed goals and objectives.

Application Requirements

Applications must be submitted on the forms supplied (PHS 516 1-1,

Revised 5/96) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

Additional Requirements

Applicants for grants must also meet both of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements).* Applications under this announcement are subject to the review requirements of E.O. 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West

Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (30 points)

(2) The applicant's rationale for use of the proposed approach and its worth for testing and/or replication based upon its previous demonstration, review of the literature and/or evaluation findings. (20 points)

(3) The applicant's presentation of an appropriate project design, consistent with the requirements of Title XX, including a clear statement of goals and objectives, reasonable methods for

achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (30 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and the other factors in sec. 2005, including consideration of:

(1) The applicant's capacity to administer funds responsibly;

(2) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(3) The population to be served;

(4) The community commitment to and involvement in planning and implementation of the demonstration project;

(5) The organizational model(s) for delivery of service;

(6) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing adolescent health models;

(7) The reasonableness of the estimated cost to the government considering the anticipated results.

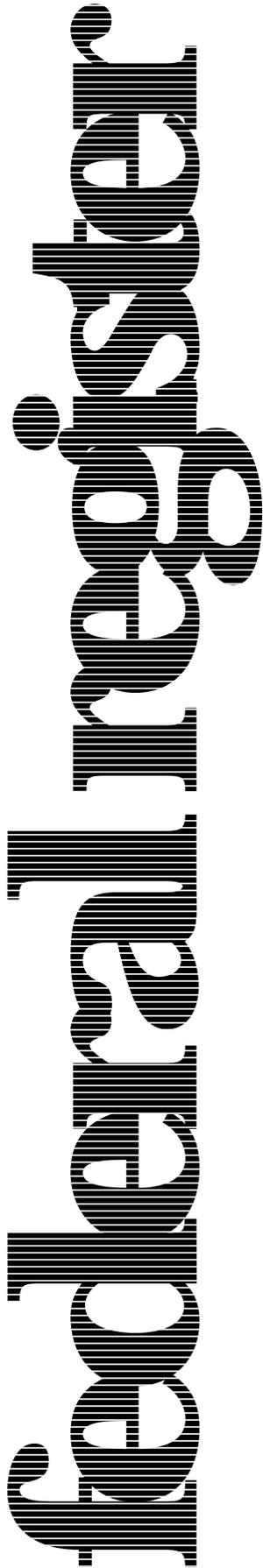
OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: April 26, 1999.

Denese O. Shervington,
Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99-11981 Filed 5-11-99; 8:45 am]

BILLING CODE 4160-17-M



Wednesday
May 12, 1999

Part IX

**Department of
Health and Human
Services**

Office of Public Health and Science;
Announcement of Availability of Grants
for Adolescent Family Life Demonstration
Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Populations Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for *prevention* grants under the Adolescent Family Life (AFL) Demonstration Projects Program. These Title XX grants are for community-based and community-supported demonstration projects to find effective means of preventing pregnancy by encouraging adolescents to abstain from sexual activity through provision of age-appropriate education on sexuality and decision-making skills. *Although adolescents under age 19 are eligible for services, the OAPP is particularly interested in projects which target youth ages 9 to 14.*

The Title XX statute contains a provision limiting the amount of AFL funding which may be used for prevention projects to not more than one-third of the overall monies available for demonstration projects. In the Fiscal Year (FY) 1997 and 1998 appropriations for Title XX, as amended, Congress waived this limitation by enacting legislation which earmarked the majority of AFL demonstration funding for prevention grants, specifically abstinence education projects as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Although the Senate Committee report accompanying the FY 1999 appropriations act indicates that continued funding of more prevention projects is the intent of Congress, the FY 1999 appropriation for Title XX does not contain a similar provision waiving the statutory limit. In order to continue to fund a larger number of prevention projects than is allowable under the statute, the Department has asked Congress to amend the FY 1999 appropriation for Title XX to include a waiver of the "not more than one-third for prevention" restrictions. The Department expects that such a waiver will be enacted.

Thus, funding for new abstinence education prevention projects under this announcement is contingent upon the enactment of an amendment to the FY 1999 appropriations act. If this amendment does not pass before the end of the fiscal year, funds will not be

available to support new projects under this announcement. In the event FY 1999 funds are not available for new abstinence education prevention projects, applications will be held for review and consideration in the following year, although the availability of funding in FY 2000 is uncertain.

To ensure that there are adequate applications which could be funded in the event the amendment is not enacted, the Department is also publishing a separate notice in the **Federal Register** announcing the availability of funds for care, prevention and combination care/prevention demonstration projects. Such applications would be considered for funding in the event the amendment described above is not enacted.

If the amendment to the FY 1999 appropriation for Title XX is enacted, funds will be available for approximately 15–20 projects, which may be located in any State, the District of Columbia, the territories of Puerto Rico, the U.S. Virgin Island, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands and the Federal States of Micronesia.

DATES: The closing date for this grant announcement is June 28, 1999. Applications will be considered as meeting the deadline if they are postmarked on or before the closing date. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 am and 5:00 pm on or before the above closing date. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant. *Applications will not be accepted by fax or e-mail. The submission deadline will not be extended.*

ADDRESSES: Application kits consisting of the appropriate forms, a copy of the Title XX legislation, and guidance on the preparation of the application may be downloaded from the following Internet address: www.hhs.gov/progorg/opa/titlexx/oapp.html. If you do not have access to the Internet, you may obtain a kit from the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. Written requests for application kits may be faxed to (301) 594-5981. *All completed applications must be submitted to the Grants management Office at the above mailing address. In preparing the applications, it is*

important to follow ALL instructions contained in the application kit.

FOR FURTHER INFORMATION CONTACT: The OAPP Program Office at (301) 594-4004. Staff is available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z. et seq., authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 93.995) title XX authorizes grants for three types of demonstration projects: (1) Projects which provide "care services" only (*i.e.*, services for the provisions of care to pregnant adolescents, adolescent parents and their family); (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent sexual relations); and (3) projects which provide a combination of care and prevention services.

Under this program announcement, OAPP intends to make available approximately \$3 million to support an estimated 15–20 new *prevention* demonstration projects only. The awards will range from \$150,000 to \$250,000. Grants may be approved for project periods of up to five years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent of the fourth year and 40 percent for the fifth year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services.

An applicant may submit a proposal for a *local or state-wide* prevention project. We encourage applications from experienced organizations which are currently operating programs and which have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.

The specific prevention services which may be funded under Title XX are listed below under Prevention Programs.

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). These information collections have been approved by OMB under control number 0937-0189.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which are determined to demonstrate the capability of providing the proposed services and meet the statutory requirements.

Prevention Programs

Under this announcement, funds are available for local or state-wide projects. The primary purpose of prevention programs is to find effective means of reaching adolescents, both male and female, before they become sexually active to encourage them to abstain from sexual activity. There is general agreement that early initiation of sexual activity brings not only the risk of unintended pregnancy but also substantial health risks to adolescents, primarily infection with sexually transmitted diseases (STDs), including HIV. Accordingly, applicants must provide services that help pre-adolescents and young adolescents acquire knowledge and skills that will instill healthy attitudes and encourage and support abstinence from sexual activity. Any information provided for adolescents who may be or become sexually active, which relates to reducing the risk of unintended pregnancy and disease, must be medically accurate and must be presented within the context that abstinence is the best choice and is what the project recommends.

Programs must not be inconsistent with abstinence educational as defined in the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," Pub. L. No. 104-193. Accordingly, under this announcement the term "abstinence education" means an education or motivational program which:

A. Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

B. Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

C. Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy,

sexually transmitted diseases, and other associated with problems;

D. Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

E. Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

F. Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

G. Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and,

H. Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Under the statutory requirements of Title XX, applicants for prevention programs are not required to provide any specific array of services. OAPP encourages the submission of applications which focus on educational services relating to family life and which teach the social, psychological and health gains to be realized by abstaining from sexual-activity.

The legislation also permits a proposal to include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; and

(6) Nutrition information and counseling.

Under this announcement, applicants may propose to develop and test new and/or innovative approaches to abstinence education aimed at promoting and fostering abstinence among adolescents. These approaches may consist of a variety of activities such as health, social, cultural,

economic and recreational activities, or combinations of all of these, as long as they contain an educational component. Applicants may also propose to develop and test new prevention curricula and materials, update existing curricula, use existing educational materials/curricula, or use any combinations of these materials, to implement their prevention demonstration projects. However, all materials and activities must not be inconsistent with "abstinence education," and must be within the scope of the Title XX services listed above.

It should be noted that grantees may not teach or promote religion in their AFL project. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation. All programming activities and program curriculum materials must contain medically accurate information, and must remain neutral on abortion. Upon approval for funding, all curricula and related educational materials must be submitted to OAPP for review and approval prior to use in the AFL project.

In addition, under sec. 2011(a) of the Act, AFL projects may not provide abortions or abortion counseling or referral either directly or through subcontract and may not advocate, promote or encourage abortion. However, if both the adolescent and her parents request abortion counseling, a project may provide referral for such counseling.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding level. All project evaluations should monitor program processes to determine whether the program has been carried out as planned and measure the program's outcomes. Waivers of the five percent limit on evaluation may be granted in cases where a more rigorous or comprehensive evaluation effort is proposed (see sec. 2006(b)(1)).

Section 2006(b)(2) of Title XX requires that the evaluations required by sec. 2006(b)(1) be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluations, each grantee shall develop a working relationship with a college or university located in the grantee's state which will provide or assist in providing monitoring and evaluation of services.

The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the intervention, development of the evaluation hypothesis(es), identification of the variables to be measured and a timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis. In the preparation of the application for Title XX funds, OAPP encourages applicants to work with the proposed evaluator to ensure that the evaluation plan is detailed and consistent with the project's proposed goals and objectives.

Application Requirements

Applications must be submitted on the forms supplied (PHS 5161-1, Revised 5/96) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

Additional Requirements

Applicants for grants must also meet *both* of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements).* Applications under this announcement

are subject to the review requirements of E.O. 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (30 points)

(2) The applicant's rationale for use of the proposed approach and its worth for testing and/or replication based upon its previous demonstration, review of the literature and/or evaluation findings. (20 points)

(3) The applicant's presentation of an appropriate project design, consistent with the requirements of Title XX, including a clear statement of goals and objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (30 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and the other factors in sec. 2005, including consideration of:

(1) The applicant's capacity to administer funds responsibly;

(2) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(3) The population to be served;

(4) The community commitment to and involvement in planning and implementation of the demonstration project;

(5) The organizational model(s) for delivery of service;

(6) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing adolescent health models;

(7) The reasonableness of the estimated cost to the government considering the anticipated results.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: April 26, 1999.

Denese O. Shervington,
Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99-11982 Filed 5-11-99; 8:45 am]

BILLING CODE 4160-17-M

REGULATORY WAIVER REQUESTS GRANTED

**Wednesday
May 12, 1999**

Part X

**Department of
Housing and Urban
Development**

**Regulatory Waiver Requests Granted;
Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4378-N-04]

**Notice of Regulatory Waiver Requests
Granted**

AGENCY: Office of the Secretary, HUD.
ACTION: Public Notice of the Granting of
Regulatory Waivers from October 1,
1998 through December 31, 1998.

SUMMARY: Under the Department of
Housing and Urban Development
Reform Act of 1989 (the "HUD Reform
Act"), HUD is required to make public
all approval actions taken on waivers of
regulations. This notice is the thirty-
second in a series, being published on
a quarterly basis, providing notification
of waivers granted during the preceding
reporting period. The purpose of this
notice is to comply with the
requirements of section 106 of the HUD
Reform Act.

FOR FURTHER INFORMATION CONTACT: For
general information about this notice,
contact Camille E. Acevedo, Assistant
General Counsel for Regulations, Room
10276, Department of Housing and
Urban Development, 451 Seventh Street,
SW, Washington, DC 20410; telephone
(202) 708-3055 (this is not a toll-free
number). Hearing or speech-impaired
persons may access this number via
TTY by calling the toll-free Federal
Information Relay Service at 1-800-
877-8391.

For information concerning a
particular waiver action for which
public notice is provided in this
document, contact the person whose
name and address is set out for the
particular item, in the accompanying
list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of
the Housing and Urban Development
Reform Act of 1989 (the "HUD Reform
Act"), the Congress adopted, at HUD's
request, legislation to limit and control
the granting of regulatory waivers by
HUD. Section 106 of the HUD Reform
Act added a new section 7(q) to the
Department of Housing and Urban
Development Act (2 U.S.C. 3535(q)),
which provides that:

1. Any waiver of a regulation must be
in writing and must specify the grounds
for approving the waiver;
2. Authority to approve a waiver of a
regulation may be delegated by the
Secretary only to an individual of
Assistant Secretary rank or equivalent
rank, and the person to whom authority
to waive is delegated must also have
authority to *issue* the particular
regulation to be waived;
3. Not less than quarterly, the
Secretary must notify the public of all

waivers of regulations that HUD has
approved, by publishing a notice in the
Federal Register. These notices (each
covering the period since the most
recent previous notification) shall:

- a. Identify the project, activity, or
undertaking involved;
- b. Describe the nature of the provision
waived, and the designation of the
provision;
- c. Indicate the name and title of the
person who granted the waiver request;
- d. Describe briefly the grounds for
approval of the request;
- e. State how additional information
about a particular waiver grant action
may be obtained.

Section 106 of the HUD Reform Act
also contains requirements applicable to
waivers of HUD handbook provisions
that are not relevant to the purpose of
this notice.

Today's document follows
publication of HUD's Statement of
Policy on Waiver of Regulations and
Directives issued by HUD on April 22,
1991 (56 FR 16337). This is the thirty-
second notice of its kind to be published
under section 106 of the HUD Reform
Act. This notice updates HUD's waiver-
grant activity from October 1, 1998
through December 31, 1998.

For ease of reference, waiver requests
granted by departmental officials
authorized to grant waivers are listed in
a sequence keyed to the section number
of the HUD regulation involved in the
waiver action. For example, a waiver-
grant action involving exercise of
authority under 24 CFR 58.73 (involving
the waiver of a provision in 24 CFR part
58) would come early in the sequence,
while waivers of 24 CFR part 990 would
be among the last matters listed.

Where more than one regulatory
provision is involved in the grant of a
particular waiver request, the action is
listed under the section number of the
first regulatory requirement in title 24
that is being waived as part of the
waiver-grant action. (For example, a
waiver of both § 58.73 and § 58.74
would appear sequentially in the listing
under § 58.73.)

Waiver-grant actions involving the
same initial regulatory citation are in
time sequence beginning with the
earliest-dated waiver grant action.

Should HUD receive additional
reports of waiver actions taken during
the period covered by this report before
the next report is published, the next
updated report will include these earlier
actions, as well as those that occurred
between January 1, 1999 through March
31, 1999.

Accordingly, information about
approved waiver requests pertaining to

HUD regulations is provided in the
Appendix that follows this notice.

Dated: May 5, 1999.

Andrew Cuomo,
Secretary.

**Appendix—Listing of Waivers of
Regulatory Requirements Granted by
Officers of the Department of Housing
and Urban Development October 1,
1998 through December 31, 1998**

Note to Reader: More information about
the granting of these waivers, including a
copy of the waiver request and approval, may
be obtained by contacting the person whose
name is listed as the contact person directly
before each set of waivers granted.

For Items 1 Through 15, Waivers
Granted for 24 CFR Parts 91, 92, 511,
570, and 576, Contact: Cornelia
Robertson Terry, Field Management
Division, Office of Executive Services,
Office of Community Planning and
Development, U.S. Department of
Housing and Urban Development, 451
Seventh Street, SW, Room 7184,
Washington, DC, 20410; telephone (202)
708-2565 (this is not a toll-free
number). Hearing or speech-impaired
persons may access this number via
TTY by calling the toll-free Federal
Information Relay Service at (800) 877-
8391.

1. Regulation: 24 CFR 91.402(a).
Project/Activity: The City of
Kettering, Ohio requested that HUD
waive 24 CFR 91.402(a) to permit the
City to continue to operate its program
year on a calendar year that starts
January 1 and ends December 31. This
cycle differs from the program year for
the Montgomery County/Kettering
Home Consortium, which starts October
1 and ends September 30.

Nature of Requirement: The
consolidated planning regulations at 24
CFR 91.402 require that all units of
general local government that are
members of a HOME consortium must
be on the same program year for
purposes of the CDBG, HOME, ESG, and
HOPWA programs.

Granted by: Joseph A. D'Agosta,
Acting General Deputy Assistant
Secretary for Community Planning and
Development.

Date Granted: October 28, 1998.
Reasons Waived: HUD determined
that there was no need to require an
administrative realignment for FY 1999
because the consortium's programs were
well underway. If Montgomery County
and Kettering wish to renew their
Consortium Agreement for the next
three year period beginning October 1,
1999, however, they must demonstrate
that the program years of all members
have been aligned.

2. Regulation: 24 CFR 91.520(a).

Project/Activity: The City of Dallas, Texas requested a waiver of the submission date for the City's Consolidated Annual Performance and Evaluation Report (CAPER).

Nature of Requirement: HUD's Consolidated Plan regulations at 24 CFR 91.520(a) requires each recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 21, 1998.

Reasons Waived: HUD determined that a waiver was justified based on the documentation and justification provided by the City explaining why it failed to meet its CAPER deadline.

3. Regulation: 24 CFR 91.520(a).

Project/Activity: The City of Washington, District of Columbia requested a waiver of its submission date for the City's Consolidated Annual CDBG Performance and Evaluation Report (CAPER).

Nature of Requirement: HUD's Consolidated Plan regulations at 24 CFR 92.520(a) require each recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 21, 1998.

Reasons Waived: HUD determined that there was good cause for the waiver, due to the City's downsizing and staff realignment, which delayed submission of the City's CAPER.

4. Regulation: 24 CFR 92.205(e) and 92.503(b)(2).

Project/Activity: The Kentucky Housing Corporation requested a waiver of the HOME program regulations relating to the repayment requirements governing uncompleted housing projects funded with HOME dollars.

Nature of Requirement: Under most circumstances, the cancellation of a HOME-assisted project before completion triggers repayment of HOME funds under 24 CFR 92.205(e) and 92.503(b)(2).

Granted by: Joseph A. D'Agosta, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: October 20, 1998.

Reasons Waived: The intended beneficiary of the rehabilitation assistance was murdered before the project could be completed. Due to the tragic and unusual circumstances, the Kentucky Housing Authority was

released from the regulatory requirement to repay HOME funds.

5. Regulation: 24 CFR 92.251.

Project/Activity: The City of Ponce, Puerto Rico requested a waiver of the HOME property standards.

Nature of Requirement: The HOME program regulations at 24 CFR 92.251 set forth property standards that housing units assisted with HOME funds must meet. These standards vary according to the activity being undertaken.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 15, 1998.

Reasons Waived: This waiver was needed in order to use HOME funds as part of the Municipality's disaster recovery efforts.

6. Regulation: 24 CFR 92.254(a)(2)(iii).

Project/Activity: The Town of Brookline, Massachusetts and the Brookline Newton Waltham Watertown (BNWW) Consortium requested a waiver to permit the Town of Brookline to base its calculation of the 95 percent median area purchase price on the median purchase price of housing sales within the Town, rather than the median purchase price of sales within the entire Consortium.

Nature of Requirement: The HOME program regulations at 24 CFR 92.254(a)(2)(iii) require that an increase in the maximum allowable housing purchase price to 95 percent of the median area purchase price, must include all areas that are part of the BNWW Consortium.

Granted by: Joseph A. D'Agosta, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: October 20, 1998.

Reasons Waived: This waiver was requested because of the extreme range in median values among the four members of the consortium. HUD determined that the waiver was needed in order to continue to offer a homebuyer's assistance program that will reach large-sized, income eligible families.

7. Regulation: 24 CFR 92.257.

Project/Activity: The City of Stamford, Connecticut requested a waiver of 24 CFR 92.257 to permit Metcalf House, Inc., a secular non-profit corporation, to use HOME funds to rehabilitate a church-owned property for ten units of special needs housing.

Nature of Requirement: The HOME program regulations at 24 CFR 92.257 preclude the use of HOME funds to rehabilitate or construct housing owned by a primarily religious organization.

The regulation, therefore, prohibits the rehabilitation of this property because it is church-owned.

Granted by: Joseph A. D'Agosta, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: November 2, 1998.

Reasons Waived: The project would not have been feasible without the waiver. The waiver enabled the City to use HOME funds to rehabilitate a church-owned property to provide ten units of special needs housing. The City structured the HOME funds in the project as a loan rather than a grant.

8. Regulation: 24 CFR 92.500(d)(1)(C).

Project/Activity: The State of Nebraska requested an extension of the five-year deadline for the expenditure of HOME disaster grant funds.

Nature of Requirement: The HOME program regulations at 24 CFR 92.500(d)(1)(C) require HUD to recapture any HOME funds not expended within five years after the last day of the month in which HUD notified the grantee of its execution of the HUD partnership agreement.

Granted by: Saul N. Ramirez, Jr., Assistant Secretary for Community Planning and Development.

Date Granted: October 6, 1998.

Reasons Waived: HUD determined that the circumstances that caused the delay in expenditure of HOME funds provided good cause to extend the five year expenditure deadline.

9. Regulation: 24 CFR 92.500(d)(1)(C).

Project/Activity: The State of Kansas requested an extension of the five-year deadline for the expenditure of HOME disaster grant funds.

Nature of Requirement: The HOME program regulations at 24 CFR 92.500(d)(1)(C) requires HUD to recapture any HOME funds not expended within five years after the last day of the month in which HUD notified the grantee of its execution of the HUD partnership agreement.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 22, 1998.

Reasons Waived: HUD determined that the circumstances that caused the delay in expenditure of HOME funds provided good cause to extend the five year expenditure deadline.

10. Regulation: 24 CFR 511.76(c).

Project/Activity: The City of Fort Worth, Texas requested a waiver to permit the City to use program income from its Rental Rehabilitation Program, for homeownership activities.

Nature of Requirement: The Rental Rehabilitation Program (RRP)

regulations at 24 CFR 511.76(c) limits the use of program income generated by the RRP that have not been closed out to: (1) the rehabilitation of RRP-eligible rental housing units; and (2) the provision of rental assistance to lower-income tenants occupying RRP-assisted properties at the time that the rehabilitation occurs.

Granted by: Joseph A. D'Agosta, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: November 2, 1998.

Reasons Waived: HUD determined that the RRP regulatory provisions relating to the eligible uses and timing of the use of program income, were limiting the City's flexibility in meeting its affordable housing needs.

11. Regulation: 24 CFR 570.200(h)(1).

Project/Activity: The City of Missoula, Montana requested a waiver of 24 CFR 570.200(h)(1) to allow the City to use CDBG funds to reimburse costs incurred for staff training and preparation of its first Consolidated Plan as a new Entitlement community.

Nature of Requirement: The CDBG regulations at 24 CFR 570.200(h)(1) state that a grantee may only use CDBG funds to pay pre-award costs if, among other things, the activity for which the costs are being incurred, is included in a Consolidated Plan or an amended Consolidated Plan prior to the costs being incurred. The City is a new Entitlement grantee and will have to incur planning and administrative costs in the preparation of its first Consolidated Plan.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: November 9, 1998.

Reasons Waived: It was never HUD's intent to put the financial burden for project start-up costs on local resources by prohibiting reimbursement from program funds. The November 1995 revision to the CDBG pre-award regulations was intended to broaden grantees' authority to use CDBG funds to pay reasonable pre-award costs. In making that revision, however, the authorization for new grantees to pay planning and administrative start-up costs with CDBG funds was inadvertently omitted. HUD determined that a waiver was needed to permit the City of Missoula to use CDBG funds to reimburse reasonable planning and administrative program start-up costs, including hiring staff and preparing the Consolidated Plan.

12. Regulation: 24 CFR 570.208(b)(1)(ii).

Project/Activity: The County of Los Angeles, California requested a waiver

of the criteria that activities must meet to qualify under the national objective of addressing slums and blight on an area basis. The County's waiver request will allow the participating City of Santa Fe Springs to use Section 108 funds to improve an area to support a large scale commercial and industrial development project.

Nature of Requirement: The CDBG regulations at 24 CFR 570.208(b)(1)(ii) state that an area delineated as slum, blighted, deteriorated or deteriorating under State or local law must have, throughout the area, a substantial number of deteriorated or deteriorating buildings or that the public improvement are in a general state of deterioration.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 21, 1998.

Reasons Waived: HUD determined that the County demonstrated good cause for a waiver by citing the fact that the area is a Brownfield. The FY 1999 HUD Appropriations Act (Pub. L. 105-276, approved October 21, 1998; 112 Stat. 2461), includes a legislative change that makes it clear that Brownfields redevelopment is an eligible CDBG activity. HUD has long recognized Brownfields as blighting influences.

13. Regulation: 24 CFR 576.21.

Project/Activity: Onondaga County requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21. Specifically, the County requested that the thirty percent limitation on essential services be waived.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Fred Karnas Jr., Deputy Assistant Secretary for Economic Development.

Date Granted: October 20, 1998.

Reasons Waived: The County provided HUD the necessary documentation that other eligible ESG program activities are being carried out in the County with other resources.

14. Regulation: 24 CFR 576.21.

Project/Activity: The Commonwealth of Puerto Rico requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Specifically, the Commonwealth requested that the thirty percent limitation on essential services in the ESG program be waived.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)).

Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 15, 1998.

Reasons Waived: The Commonwealth of Puerto Rico provided HUD the necessary documentation that other eligible ESG program activities are being carried out in the jurisdiction with other resources.

15. Regulation: 24 CFR 576.21.

Project/Activity: The City of New York, NY requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21. Specifically, the City requested that the thirty percent limitation on essential services be waived.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 15, 1998.

Reasons Waived: The City of New York provided HUD the necessary documentation that other eligible ESG program activities are being carried out in the City with other resources.

For Item 16, Waiver Granted for 24 CFR Part 811, Contact: James B. Mitchell, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-3730 x2612 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8391.

16. Regulation: 24 CFR 811.104.

Project/Activity: The refunding of bonds that financed a HoDAG assisted project in Palm Beach County, Florida (Caribbean Villas Apartments, Project No. FL001-HG401).

Nature of Requirement: HUD regulations at 24 CFR part 811 prohibit payment of a fee to a Housing Authority, other than for actual expenses of a bond refunding transaction.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 1998.

Reasons Waived: The refunding bonds are being issued on terms that will reduce debt service in order to strengthen the financial condition of the project, and to redeem outstanding 1989 Bonds. The low-income rent restrictions of sections 103 and 141-150 of the Internal Revenue Code (26 U.S.C. 103, 141-105) will apply during the new financing term to the year 2028. The Palm Beach County Housing Authority will receive a fee of \$32,500 for its participation in this transaction. This fee will be paid by the project owner and will not be paid from refunding bond proceeds or from debt service reserve residual balances.

For Items 17 Through 27, Waivers Granted for 24 CFR Part 891, Contact: Willie Spearmon, Director, Business Products, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-7000; telephone (202) 708-3000 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8391.

17. Regulation: 24 CFR 891.100(d).

Project/Activity: The amendment of an approved capital advance for projects located in Nebraska (New Beginnings Plaza, Project No. 103-HDO18, Prairie Haven, Project No. 103-EE016, Park Plaza, Project No. 103-EE017) before initial closings had occurred.

Nature of Requirement: The amendment of an approved capital advance is prohibited before the initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 22, 1998.

Reasons Waived: The waiver is based on the fact that the sponsors, architects, contractors, and consultant explored every avenue to save money on design, labor, and materials. In addition, construction costs in rural areas of Nebraska are more expensive.

18. Regulation: 24 CFR 891.100(d).

Project/Activity: The amendment of an approved capital advance for a project located in Crossville, Tennessee (Micki Thompson Apartments, Project No. 087-HDO30) before the initial closing had occurred.

Nature of Requirement: The amendment of an approved capital advance is prohibited before the initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 7, 1998.

Reasons Waived: The waiver is based on the project's development cost being comparable in cost and design to similar projects in the area, and because the owner was unable to obtain additional funding from other sources.

19. Regulation: 24 CFR 891.100(d).

Project/Activity: The amendment of an approved capital advance for projects located in Warren, Michigan (Presbyterian Villages of Michigan (Warren Glenn), Project No. 044-EE044/MI28-S961-010) before the initial closing had occurred.

Nature of Requirement: The amendment of an approved capital advance is prohibited before the initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 7, 1998.

Reasons Waived: The waiver is based on the fact that the sponsor incurred higher costs due to the shortage of skilled tradespeople, and design changes required for the project to blend into the neighborhood.

20. Regulation: 24 CFR 891.165.

Project/Activity: The duration of the fund reservation was extended for a project located in Berkeley, California (Maggie Kuhn Apartments, Project No. 131-EE093/CA39-S961-006).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 17, 1998.

Reasons Waived: The duration of the fund reservation was extended because additional time was required for HUD to review and approve secondary financing documents.

21. Regulation: 24 CFR 891.165.

Project/Activity: The duration of the fund reservation was extended for a project located in New York (Msgr. Joseph F. Stedman Residence, Project No. 012-EE198/NY36-S961-016).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 17, 1998.

Reasons Waived: The duration of the fund reservation was extended because the processing of some of the initial closing documents was delayed.

22. Regulation: 24 CFR 891.165.

Project/Activity: The duration of the fund reservation was extended for a project located in Richmond, California (North Richmond Senior Housing, Project No. 131-EE-098/CA39-S961-011).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1998.

Reasons Waived: The duration of the fund reservation was extended because the sponsor/owner was forced to change sites.

23. Regulation: 24 CFR 891.165.

Project/Activity: The duration of fund reservations was extended for four projects located in Kentucky (Bivins Place, Project No. 083-HDO40-NP-CNU, Cedar Lake Project No. 083-HDO38-NP-WDD, Marian Manor Project No. 083-EE050-NP-WAH, Rall Place Project No. 083-HDO43-NP-CMI).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dates Granted: December 29, 1998.

Reasons Waived: The duration of the fund reservations was extended because the projects experienced delays due to owners trying to identify other funding resources. These other funding sources were necessary because the funds reserved were not sufficient to construct the projects.

24. Regulation: 24 CFR 891.165.

Project/Activity: The duration of the fund reservation was extended for a project located in Capitola, California (Capitola Supportive Housing, Project

No. 131-HD051-WPD/CA39-Q961-005).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 1998.

Reasons Waived: The duration of the fund reservation was extended because the processing was delayed due to a redesign of the development to reduce cost. The project also had to seek secondary financing from other sources for the cost overruns.

25. Regulation: 24 CFR 891.165.

Project/Activity: The duration of the fund reservation was extended for a project located in Gilroy, California (Villa Esperanza, Project No. 121-HD053-WDD/CA39-Q961-007).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 1998.

Reasons Waived: The duration of the fund reservation was extended because the project's original site was rejected due to environmental concerns.

26. Regulation: 24 CFR 891.165.

Project/Activity: The duration of the fund reservation was extended for a project located in Berkeley, California (Rosevine Supported Living Project, Project No. 131-HD050-WDD/CA39-Q961-004).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dates Granted: December 29, 1998.

Reasons Waived: The duration of the fund reservation was extended because the process of seeking and obtaining approval of the secondary financing from the City of Berkeley delayed the initial closing. In addition, the project had to be redesigned to reduce costs.

27. Regulation: 24 CFR 891.310(b)(1).

Project/Activity: A project in Boston, Massachusetts (Supportive Living Program, Project No. 023-HD066) requested a waiver of additional accessibility requirements.

Nature of Requirement: All entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dates Granted: October 23, 1998.

Reasons Waived: The project consists of two existing condominium units for 3 persons with developmental disabilities. The waiver was based on the fact that these units are condominiums and HUD funds were not available to make the hallways, entrances, and common areas accessible.

For Items 28 Through 31, Waivers Granted for 24 CFR Part 891, Contact: Jerold Nachison, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6168, Washington, DC 20410; telephone (202) 708-3730 x2485 (this is not a toll-free number). Hearing-or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8391.

28. Regulation: 24 CFR 891.410(c).

Project/Activity: The Fort Worth Multifamily Hub and the Houston Program Center requested a waiver of the age requirement for 22 non-elderly people with disabilities residing in a project located in Beaumont, Texas (Metro YMCA of Beaumont, Project No. 113-EE019/TX24-S931-003).

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons, at least one of whom is 62 years of age at time of initial occupancy).

Granted by: Ira G. Peppercorn, General Deputy Assistant Secretary for Housing.

Date Granted: October 13, 1998.

Reasons Waived: The waiver is based on the special circumstances of this case, which relate to the unusual rent-up process utilized, reliance by the owner on erroneous advice from the Houston Multifamily Program Center and FH&EO, and potential hardship for both the project and occupants themselves.

29. Regulation: 24 CFR 891.410(c).

Project/Activity: Kansas City Hub requested an age waiver because of a continual vacancy problem for a project located in Appleton City, California (Appleton Estates, Project No. 084-EH068).

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons, at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 6, 1998.

Reasons Waived: The waiver is based on the area's "soft" housing market and the difficulty in renting efficiency units. The waiver would allow project management additional flexibility in attempting to rent-up these units.

30. Regulation: 24 CFR 891.410(c).

Project/Activity: The Philadelphia Multifamily Hub requested a waiver of the age requirement for five non-elderly disabled families residing in a project located in Romney, West Virginia (Romney Unity, Project No. 045-EE019), and 17 non-elderly families residing in a project located in West Hamlin, West Virginia (Lincoln Unity, Project No. 045-EE098) who are under age 62.

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons, at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 17, 1998.

Reasons Waived: The waiver is based on the circumstances of this case, which involves reliance by the owner resulting from erroneous advice from the Charleston Multifamily Program Center (MPC), and may result in potential hardship to both the project and tenants, if immediately displaced.

31. Regulation: 24 CFR 891.410(c).

Project/Activity: Greensboro Multifamily Hub requested a waiver of income and age requirements for 10 non-elderly people residing in a project located at James Island, South Carolina (St. James Place, Project No. 054-EE019).

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons, at least one of whom is 62 years of age at the time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 17, 1998.

Reasons Waived: The waiver is based on the special circumstances of this case, which concerns 8 non-elderly disabled residents who are VLI and 2 elderly residents who are low income but not VLI. The potential hardship posed for both tenants and the project necessitates this waiver.

For Items 32 Through 34 Waivers Granted for 24 CFR Parts 982 and 984, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4204, Washington, DC 20410; telephone (202) 619-8201 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8391.

32. Regulation: 24 CFR 982.303(b).

Project/Activity: Oakland Housing Authority, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: November 21, 1998.

Reason Waived: The waiver was granted to reunite the family and to give the family (one adult and two children) the opportunity to break its cycle of homelessness.

33. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of the County of Santa Clara (HACSA), San Jose, CA; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: December 23, 1998.

Reason Waived: The waiver was granted to prevent further hardship for a family (consisting of one adult and three teenage children) and to prevent the possible separation of the family due to the lack of adequate housing.

34. Regulation: 24 CFR 984.306(b).

Project/Activity: Housing Authority of Jackson County, Oregon; Section 8 Family Self-Sufficiency (FSS) Program.

Nature of Requirement: The regulation provides that a Section 8 rental certificate or voucher program participant must lease a unit in the jurisdiction of the public housing agency that selected the family for the FSS program for a minimum of 12 months after the effective date of the FSS contract.

Granted By: Deborah Vincent, General Deputy Assistant Secretary Office of Public and Indian Housing.

Date Granted: October 16, 1998.

Reason Waived: Approval of the waiver permitted the Section 8 certificate program participant to complete her education and become self-sufficient.

For Items 35 and 36, Waivers Granted for 24 CFR Part 990, Contact: Joan DeWitt, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Operations, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4216, Washington, DC 20410; telephone (202) 619-1872 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8391.

35. Regulation: 24 CFR 990.107(b) and 990.110(c)(2)(ii).

Project/Activity: Dover Housing Authority, Dover, NH. A request was made for a waiver of the Performance Funding System (PFS) regulations regarding the execution of an energy performance contract.

Nature of Requirement: HUD's PFS regulations at 24 CFR 990 specifically refer to savings from *decreased* consumption which must be waived to

permit conversion from one utility source to another to qualify for the "freeze of the rolling base" energy incentive.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 3, 1998.

Reason Waived: The Dover Housing Authority was granted a regulatory waiver to permit it to use the "freeze of the rolling base" methodology for a conversion from one energy source to another in an energy performance contract under the PFS energy cost savings incentives. Conversion from one utility source to another may result in significant cost avoidance, even though comprising a *shift* in consumption, rather than a reduction.

36. Regulation: 24 CFR 990.107(b) and 990.110(c)(2)(ii).

Project/Activity: New Bedford Housing Authority, New Bedford, MA. A request was made for a waiver of the Performance Funding System (PFS) regulations regarding the execution of an energy performance contract.

Nature of Requirement: HUD's PFS regulations at 24 CFR 990 specifically refers to savings from *decreased* consumption which must be waived to permit conversion from one utility source to another to qualify for the "freeze of the rolling base" energy incentive.

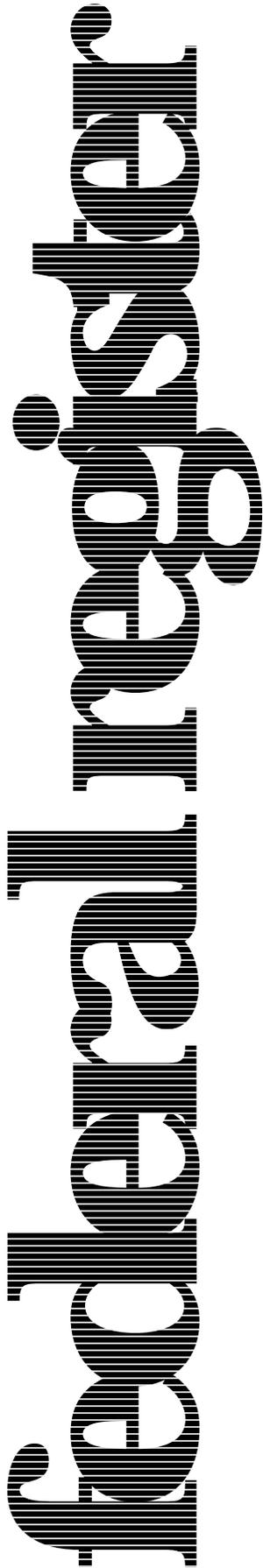
Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: November 13, 1998.

Reason Waived: The New Bedford Housing Authority was granted a regulatory waiver to permit it to use the "freeze of the rolling base" methodology for a conversion from one energy source to another in an energy performance contract under the PFS energy cost savings incentives. Conversion from one utility source to another may result in significant cost avoidance, even though comprising a *shift* in consumption, rather than a reduction.

[FR Doc. 99-11910 Filed 5-11-99; 8:45 am]

BILLING CODE 4210-32-P



Wednesday
May 12, 1999

Part XI

**Department of
Justice**

Bureau of Prisons

28 CFR Part 540

**Visiting: Notification to Visitors; Final
Rule**

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 540**

[BOP 1071-F]

RIN 1120-AA67

Visiting: Notification to Visitors

AGENCY: Bureau of Prisons, Justice.

ACTION: Final Rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on visiting to make the inmate responsible for having a release authorization form mailed to the inmate's proposed visitor in instances where a background investigation is necessary before the visitor can be approved. This amendment is intended to increase consistency in Bureau operations and to reduce the cost to the government in processing additions to an inmate's visitor's list.

EFFECTIVE DATE: June 11, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on visiting (28 CFR part 540, subpart D). A proposed rule on this subject was published in the **Federal Register** September 11, 1997 (62 FR 47894) which requested comment by November 10, 1997. The Bureau received seven identical comments on the proposed rule. A summary of these comments and the Bureau's response follow.

The commenters all identified themselves as inmates at one particular Federal correctional facility. The commenters stated that they had been informed that all of their visitors (including immediate family members) needed to complete and return a release authorization form before being allowed to visit. The commenters stated that to the best of their knowledge all visitors had to complete and submit the form. This statement presumably rebuts the assertion in the proposed rule that the authorization form is necessary when background information is necessary (for example, when the proposed visitor is not a member of the immediate family).

The commenters stated that they did not want the responsibility of sending the forms and then receiving and

transmitting the forms to institution staff. The commenters further stated that they disapproved of the forms as being intrusive in the lives of other people and that they believed their sending the form to potential visitors constituted their personal stamp of approval to the form. The commenters stated that they wanted the Bureau to have total responsibility for sending and receiving the forms.

The commenters also objected to the proposal on the grounds that it constituted an imposition on indigent inmates. The commenters noted that under Bureau policy inmates without funds were eligible to receive a certain amount of stamps for their legal and social mail (see 28 CFR 540.21(d) and (e)). The commenters maintained that sending the authorization forms constituted a business or information gathering use and consequently was an unwarranted imposition upon such inmates.

Finally, the commenters complained about implementation of existing procedures, stating that they were aware of instances in which visitors came to Bureau institutions and were refused admittance presumably because the returned forms were not properly filed.

In response, the Bureau notes that the regulations in 28 CFR 540.51(b)(3) state that if a background investigation is necessary before approving a visitor, the inmate may be held responsible for having a release authorization form forwarded to the proposed visitor. Ordinarily background information is obtained from potential visitors who are not members of the inmate's immediate family. Exception to this procedure may be made when warranted. However, the expectation is that immediate family members generally do not have to provide background information. If an inmate believes that the practice at an institution is not in conformance with Bureau policy, the inmate may bring the matter to the attention of the appropriate Bureau officials through the Administrative Remedy Program (see 28 CFR part 242).

As for the regulatory revision proper, former § 540.51(b)(3) already provided that the inmate could be held responsible for forwarding the authorization form to the potential visitor. As noted in the proposed rule, paragraph (b)(3) was being revised in the interest of reducing costs to the government and for the sake of consistency. There is no change in the regulations with respect to the return of completed forms. Completed forms will continue to be returned to Bureau staff for processing.

Regarding the release authorization form itself, the form is in compliance with information collection standards. Sending the form to a potential visitor therefore need not represent the personal views of the individual sender.

Regarding the impact on inmates without funds, the Bureau believes that the amendment does not unduly burden the inmate because correspondence which conveys the release authorization form to a potential visitor can also serve broader social contact purposes.

Upon due consideration, the Bureau is adopting the proposed revision to § 540.51(b)(3) as final without change. Members of the public may submit further comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no comment in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not

significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of

these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514-6655.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 540.51, paragraph (b)(3) is amended by revising the first sentence to read as follows:

§ 540.51 Procedures.

* * * * *

(b) * * *

(3) If a background investigation is necessary before approving a visitor, the inmate shall be held responsible for mailing a release authorization form to the proposed visitor.

* * * * *

[FR Doc. 99-11980 Filed 5-11-99; 8:45 am]

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RULES GOING INTO EFFECT MAY 12, 1999**AGENCY FOR INTERNATIONAL DEVELOPMENT**

Commodities and services financed by USAID; rules and procedures; administrative revisions; published 4-12-99

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Azoxystrobin; published 5-12-99

Dimethomorph etc.; published 5-12-99

Halosulfuron; published 5-12-99

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Food additive:

Adjuvants, production aids, and sanitizers—

5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone; published 5-12-99

INTERIOR DEPARTMENT**Indian Affairs Bureau**

Indian Gaming Regulatory Act:

Class III (casino) gaming on Indian lands; authorization procedures when States raise Eleventh Amendment defense; published 4-12-99

STATE DEPARTMENT

Freedom of Information Act; implementation:

National security information; classification, safeguarding, and declassification; published 5-12-99

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:

Boeing; published 4-7-99

Bombardier; published 4-7-99

McDonald Douglas; published 4-7-99

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Cotton research and promotion order:

Imported cotton and cotton content of imported products; supplemental assessment calculation; comments due by 5-19-99; published 4-19-99

Soybean promotion and research program; referendum; comments due by 5-17-99; published 4-16-99

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Interstate transportation of animals and animal products (quarantine):

Johne's disease in domestic animals; comments due by 5-21-99; published 3-22-99

Viruses, serums, toxins, etc.:

Packaging and labeling—
Veterinary biological products; comments due by 5-17-99; published 3-18-99

COMMERCE DEPARTMENT**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

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Pacific Coast groundfish; comments due by 5-20-99; published 5-5-99

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COMMERCE DEPARTMENT**Patent and Trademark Office**

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CONSUMER PRODUCT SAFETY COMMISSION

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ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans

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Air quality implementation plans; approval and promulgation; various States:

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Illinois; comments due by 5-17-99; published 4-16-99

Minnesota; comments due by 5-19-99; published 4-19-99

Ohio; comments due by 5-20-99; published 4-20-99

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Tennessee; comments due by 5-20-99; published 4-20-99

Texas; comments due by 5-20-99; published 4-20-99

Air quality planning purposes; designation of areas:

California; comments due by 5-19-99; published 5-5-99

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Potato leaf roll virus resistance gene (orf1/orf2 gene); comments due by 5-17-99; published 3-17-99

Radiation protection programs:

Idaho National Engineering and Environmental Laboratory; waste characterization program; documents availability; comments due by 5-17-99; published 4-16-99

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

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Law book industry; correction; comments due by 5-17-99; published 4-13-99

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

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INTERIOR DEPARTMENT**Fish and Wildlife Service**

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INTERIOR DEPARTMENT**Surface Mining Reclamation and Enforcement Office**

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POSTAL SERVICE

International Mail Manual:

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Vessel equipment temporarily landed for repair; comments due by 5-17-99; published 3-18-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

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index.html. Some laws may not yet be available.

S. 531/P.L. 106-26

To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation. (May 4, 1999; 113 Stat. 50)

Last List May 4, 1999

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