

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in Feet *(NAVD)	
				Existing	Modified
		Flow Path No. 29 .....	Approximately 200 feet downstream of Del Monte Street.	*3,737	3,736
			Approximately 250 feet upstream of Cimarron Street.	*3,671	3,769
		Flow Path No. 30 .....	At the confluence of Flow Path No. 28 Mesa Drain and Interceptor.	*3,681	3,678
			Approximately 380 feet upstream of North Carolina Drive.	*3,727	*3,721
		Flow Path No. 32 .....	At the confluence with Flow Path No. 28 Mesa Drain and Interceptor.	*3,671	*3,668
			Approximately 35 feet downstream of Escobar Avenue.	*3,713	*3,714
		Flow Path No. 33 Middle Drain.	Just upstream of confluence with lowenstein Lateral.	*3,667	*3,666
			Approximately 85 feet downstream of North Zarogosa Road.	*3,667	*3,668

Maps are available for inspection at 2 Civic Center Plaza, El Paso, Texas.

Send comments to The Honorable Joe Wardy, Mayor, City of El Paso, 2 Civic Center Plaza, 10th Floor, El Paso, Texas 79901.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 13, 2005.

**David I. Maurstad,**

*Acting Director, Mitigation Division,  
Emergency Preparedness and Response  
Directorate.*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 36

[FAR Case 2004-023]

#### **Federal Acquisition Regulation; Application of the Brooks Act to Mapping Services; Analysis of Comments**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice; Analysis of Comments.

**SUMMARY:** The Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council (the Councils) have reviewed the public comments received in response to the request for comments on the application of the Brooks Architect-Engineers Act to mapping services. The Councils have determined that no change to the FAR

is necessary. In the interest of transparency, this notice sets forth the rationale supporting this determination.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia Davis, at (202) 219-0202. Please cite FAR case 2004-023.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On October 27, 1972, the Brooks Architect-Engineers Act (Pub. L. 92-582) (40 U.S.C. 541 *et seq.*, recodified now at 40 U.S.C. 1101 *et seq.*) required that all requirements for Architect-Engineers (A-E) services be publicly announced, and be negotiated on the basis of demonstrated competence and qualifications for the type of professional services required, at fair and reasonable prices. The Act established a specific qualification based procurement process to be used in procurements for architect-engineer services, which the Act defined as "those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform."

Since enactment, Congress has expanded the definition of A-E services (Pub. L. 100-656, Pub. L. 100-679, Pub. L. 101- 574). Of specific note here, Section 403 of Pub. L. 101-574 (SBA Reauthorization and Amendments Act of 1990) required that, pursuant to Section 742 of Public Law 100-656, modifications to FAR Part 36 shall specify that "the definition of architectural and engineering services includes surveying and mapping services to which the selection

procedures of Subpart FAR 36.6 of the Federal Acquisition Regulation apply." Some interpret this to mean that all mapping services are subject to FAR Subpart 36.6. Others interpret the phrase "to which the selection procedures of Subpart 36.6 of the Federal Acquisition Regulation apply" as a limitation modifying "mapping services." On October 10, 1991, then OFFP Administrator issued a letter to the FAR Committee stating that "the determining factor in deciding whether mapping services should be procured through the A-E process or through normal competitive procedures is whether mapping services are associated with 'traditionally understood or accepted architectural or engineering activities.'"

The FAR states concerning professional surveying and mapping services of an architectural or engineering nature:

Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15. FAR 36.601(a)(4).

During the years since enactment of the Brooks Act in 1972, the mapping

services industry has evolved extensively to become a producer of commercial data (digital) products with broad applications—quite distinct from the practice of architecture or engineering.

This case was initiated after review of comments received in response to FAR Case 98-023, Application of the Brooks Act. FAR case 98-023 was undertaken in response to enactment of Section 8101 of the National Defense Appropriations Act (Pub. L. 105-262), which required the National Imagery and Mapping Agency (NIMA) to procure mapping and charting services using Fiscal Year 1999 monies in accordance with the Brooks Act. Prior to enactment of Section 8101, FAR at 36.601-4(a) prescribing the use of the Brooks Act qualification-based process listed NIMA mapping services as an example of services that were not subject to the qualification-based process. After enactment of Section 8101, the listing of NIMA at FAR 36.601-4(a) was no longer appropriate. As a result, FAR case 98-023 deleted the NIMA example.

That case was published as a final rule as part of FAC 97-12, at 64 FR 32740, June 17, 1999. Although there was some objection to publication as a final rule without request for comment, the FAR Council found that removal of an example could not alter the fundamental meaning of the surrounding statements. Removal of an example did not change the FAR policies relating to application of the Brooks Act to mapping services.

However, at the request of the FAR Council, DoD, GSA, and NASA published a notice in the **Federal Register** at 69 FR 13494, March 23, 2004, requesting comments on the application of the Brooks Act to mapping services. Public comments were due May 24, 2004.

## II. Analysis of Comments

Fifty-two respondents submitted comments, of which more than half were government employees.

Some of the respondents think that the Brooks Act should apply to all acquisition of mapping services.

More respondents agree that the Brooks Act applies only to some mapping services. A few of the respondents in this later category want to clarify the FAR so that the Brooks Act is less applicable to the acquisition of mapping services. Most do not recommend any change to the FAR.

1. *Comments that the Brooks Act applies to the acquisition of all mapping services.*

Some respondents recommend that we amend the FAR to clearly require

Brooks Act procedures for all acquisition of mapping services. These respondents maintain that contracting officers have no discretion to decide whether mapping services or surveying work requires Brooks Act procedures. These respondents support their position by assertions that—

a. Credentialing requirements for mapping services identify these services as subject to the Brooks Act procedures;

b. Qualification based procedures are necessary to avoid a broad range of public safety calamities;

c. Prohibitions exist at the state-level on A-E competitive bidding in securing work; and

d. Legislative history clearly supports these views.

*Response:* The Councils believe that the Brooks A-E Act, state law, GAO cases, and accepted formal guidelines controlling the professions of architecture, engineering and surveying do not support the views of these respondents. The pertinent foundational guidelines authored by The National Council of Examiners for Engineering and Surveying (NCEES) explicitly exclude mapping services from the professions of engineering and surveying.

*Assertion 1. Credentialing requirements for mapping services identify these services as subject to the Brooks Act procedures.*

To test this assertion, the Councils looked at the public guidance authored by the professional councils that advise states in governing the practice of architecture and engineering. These councils are National Council of Architectural Registration Boards (NCARB) and the NCEES. NCEES governs over Engineering (journeyman credential being Professional Engineer or PE) and Land Surveying (journeyman credential being Professional Land Surveying or PLS) as two distinct professions. NCEES also advises in areas of engineering not normally associated with development of real property (e.g., aerospace, automotive, industrial engineering). Moreover, NCEES and NCARB are charged with moderating the full range of professional practice rules and regulations to balance professional interest with public interest. In coordination with industry, state regulators, and building officials, these two organizations provide guidance over issues of credentialing (education, experience and exam requirements) and professional boundaries. These councils render their opinions within the general context of the law, profession and public interest. These opinions must survive public criticism from industry and non-federal

national, state and local officials charged with protecting public interest including safety. As such, the Councils view the guidance of these councils as decisive and definitive in matters relating to the practice of architecture and engineering, individually and respectively.

NCARB notes in their guidance to state governments: "By far the great majority of state legislatures have demonstrated their statutory intent to distinguish between the practice of architecture and engineering." From NCEES's *Model Law*, (revised August 2004), ([http://www.ncees.org/introduction/about\\_ncees/ncees\\_model\\_law.pdf](http://www.ncees.org/introduction/about_ncees/ncees_model_law.pdf)), the "practice of engineering" is defined as follows:

The term "Practice of Engineering," within the intent of this Act, shall mean any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, expert technical testimony, evaluation, planning, design and design coordination of engineering works and systems, planning the use of land, air, and water, teaching of advanced engineering subjects, performing engineering surveys and studies, and the review and/or management of construction for the purpose of monitoring and/or ensuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, communication systems, transportation systems, and industrial or consumer products, or equipment of a control systems, communications, mechanical, electrical, hydraulic, pneumatic, chemical, environmental, or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. (Paragraph 110.20A.5. Definitions).

NCEES goes on to discern among the professionals involved in the development of real property:

Design coordination includes the review and coordination of those technical submissions prepared by others, including as appropriate and without limitation, consulting engineers, architects, landscape architects, surveyors, and other professionals working under the direction of the engineer. (Paragraph 110.20A.5. Definitions).

NCEES further clarifies the control hierarchy between engineers and surveyors:

Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land

boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system. (Paragraph 110.20A.5. Definitions).

This sets context for NCEES to define the profession of surveying, apart from engineering. Distinct from Engineering, NCEES defines the practice of Land Surveying:

The term "Practice of Surveying," within the intent of this Act, shall mean providing, or offering to provide, professional services using such sciences as mathematics, geodesy, and photogrammetry, and involving both (1) the making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth, improvements on the earth, the space above, on, or below the earth and (2) providing, utilizing, or developing the same into survey products such as graphics, data, maps, plans, reports, descriptions or projects. Professional services include acts of consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting gathered measurements and information related to any one or more of the following:

- a. Determining by measurement the configuration or contour of the earth's surface or position of fixed objects thereon.
- b. Determining by performing geodetic surveys the size and shape of the earth or the position of any point of earth.
- c. Locating, relocating, establishing, reestablishing, or retracing property lines or boundaries of any tract of land, road, right of way, or easement.
- d. Making any survey for the division, subdivision, or consolidation of any tract(s) of land.
- e. Locating or laying out alignments, positions, or elevations for the construction of fixed works.
- f. Determining, by the use of principles of surveying, the position for any survey monument (boundary or non-boundary) or reference point; establishing or replacing any such monument or reference point.
- g. Creating, preparing, or modifying electronic or computerized or other data, relative to the performance of the activities in the above described items a. through f.

Any person shall be construed to practice or offer to practice surveying, within the meaning and intent of this Act, who engages in surveying or who by verbal claim, sign, advertisement, letterhead, card, or any other way represents themselves to be a professional surveyor, through the use of some other title implies that they are able to perform, or who does perform any surveying service or work or any other service designated by the practitioner which is recognized as surveying. (Paragraph 110.20B.4. Definitions).

Despite the broadly encompassing verbiage of the NCEES definitions of engineering and surveying practice,

NCEES makes no mention of general mapping services as produced or procured only by the Federal Government. NCEES provides a detailed list of "Inclusions and Exclusions of Surveying Practice." In fact, NCEES explicitly excludes any such academic, defense and political administration mapping efforts. The essence of the breakdown is that professional "surveying work" is tied to real property (boundaries, location of fixed, manmade works, and topography). Excluded items line up consistently with the Part 12 items mentioned. The Councils, therefore, note that NCEES holds surveying work to be distinct from engineering and mapping services.

NCARB defines the Practice of Architecture in its *Legislative Guidelines and Model Law, Model Regulations 2004- 2005*, (revised August 2004)

(<http://www.ncarb.org/Forms/legisgl.PDF>) as follows:

\* \* \* consisting of providing or offering to provide certain services, hereafter described, in connection with the design and construction, enlargement or alteration of a building or group of buildings and the space within and the site surrounding such buildings, which have as their principal purpose human occupancy or habitation. The services referred to include pre-design; programming; planning; providing designs, drawings, specifications and other technical submissions; the administration of construction contracts; and the coordination of any elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers and landscape architects. The practice of architecture shall not include the practice of engineering, but an architect may perform such engineering work as is incidental to the practice of architecture. (Legislative Guidelines Paragraph I.A.)

The NCARB control hierarchy recognizes that an architect may do engineering, including surveying work, related and incidental to the creation of real property under their charge. Likewise, NCEES recognizes that an engineer may do surveying work related and incidental to the creation of real property under their charge. A surveyor, however, may never practice architecture or engineering in any capacity.

Since professional credentialing has been used to identify Brooks Act application, the Councils broadly considered credentialing of commercial activity. The Councils note that credentialing occurs at both the state and local levels and is established for reasons outside of public safety. The broadest credentialing of individuals takes place in the broad realm of consumer protection. This ranges from

credentialing tradesman, contractors, architects and engineers directly involved in the making of buildings; to surveyors, certified interior designers and landscape architects indirectly involved; to medical doctors, boxing and wrestling promoters, hair stylists, funeral directors or waste-water plant operators which have no direct connection to public safety relative to real property.

Cadastral surveying work (land boundary surveying) is licensed distinct from the building design professions of architecture and engineering. Whereas architecture and engineering carry degree and examination requirements relating to theory and practical application of theory taught in an academic setting, cadastral surveying credentialing springs from hands-on training in the field working for a licensed surveyor.

Construction itself is professionally credentialed by numerous states, yet procured under openly competitive means. When the Federal Government procures wastewater operations or medical related services that, for example, are licensed under dire public safety concerns, it does so under Part 15 not Part 36.

The Councils conclude that state credentialing, even for public safety reasons, is not sufficient to distinguish a task as falling under Brooks Act procedures. The Councils also conclude that the credentialing that is pertinent to Brooks Act relates to the credentialing well established outside of the non-federal setting for the protection of public safety in the development of real property as discussed above.

In summary, the Councils find that credentialing does not clarify distinctions with regards to surveying and mapping services. Credentialing provides meaningful distinctions only to the extent that the services are performed as part of design, construction, alteration and repair of real property.

*Assertion 2. Brooks Act qualification-based selection procedures are necessary to avoid a broad range of public safety calamities.*

Numerous products and services for which safety and public safety are critical are not procured using Brooks Act procedures. There is no question that the collective experience in Federal procurement finds the government procuring some of the most critical systems, products and services outside Part 36 selection procedures without public safety calamity or inconvenience. The Councils questioned the unstated premise of Brooks Act—that safety concerns necessitate Part 36 selection

procedures as the preferred method of selection. There are numerous counter-examples to this presumption. Namely, complex life saving and transportation systems (even extra-planetary), charting and disposal of unexploded ordnance, and medical services all are procured successfully without use of Part 36 procedures.

The assertion appears to be based on the premise that "government procurement procedures properly emphasized awarding contracts to the lowest bidder, or using price as a dominant factor." This comment ignores a decade of procurement reform, and presents an argument that predated the Competition in Contracting Act of 1984. It does not recognize current competitive practices associated with negotiated procurements such as negotiated best value source selection procurement or streamlined commercial items procedures.

How is public safety governed in non-federal Real Property work? Public safety in non-federal real property work is maintained through layers of protection. Credentialing of Architects and Engineers by states is but one layer. This is accomplished either by state-run examinations or standardized exams provided nationally through not-for-profit organizations. Architects and engineers both have secondary school educational requirements and on-the-job professional experience requirements. National Architectural Accrediting Board (NAAB) and the Accrediting Board for Engineering and Technology (ABET) accredits degree programs for both architecture and engineering. Furthermore, NCEES and NCARB deliberations place the architect in the lead role in the creation of habitable buildings. Protection also derives from codified National and International standards of building. Zoning controls the safe and healthful disposition of structures and uses and other planning ordinances coordinated by architects. These codes are enforced by plan reviews (county or city building departments) and credentialing enforcement actions. At each step, the real property solution is checked against accepted standards. In the non-federal setting, surveying and mapping services are not overseen and controlled as part of the public safety protection, except where they involve real property development.

In Federal procurement of A-E services, licensed professional civil servants perform analogous real property public safety and health oversight as part of their quality assurance functions in the acceptance of

finished designs obtained under contract.

*Assertion 3. Prohibitions exist at the state-level on A-E competitive bidding in securing work.*

The Councils note that NCARB provides the most detailed analysis of trends and current accepted practice in area of profession rules of conduct. In general, NCARB guidance to state boards notes a general professional shift towards favoring public interest (transparency and price competition) over rules that protect professional interests.

NCARB in its Rules of Conduct, 2004-2005 (revised August 2004) (<http://www.ncarb.org/Forms/roconduct.pdf>) organizes rules of conduct into five subject areas: 1) Competence; 2) Conflict of Interest; 3) Full Disclosure; 4) Compliance with Laws; 5) Professional Conduct. NCARB states:

There are, however, various rules of conduct found in many existing state board rules which seem more directed at protecting the profession than advancing the public interest. Such a rule is the prohibition against allowing one architect to supplant another. . . . Similarly, prohibitions against brokers selling architects' services, fee competition, advertising, free sketches, and the like, seem more appropriately included in professional ethical standards than in rules to be enforced by state agencies. (Rules of Conduct, Introduction.)

It appears that state restriction against A-Es competing for work has faded as an issue for state regulation. If this is true for states, this must influence the question whether *Federal* regulation should preserve non-competitive A-E procedures associated with real property work under the Brooks Act. The Councils could not find any guidance prohibiting Engineers and Surveyors from competing for projects. It seems likely, therefore, that surveyors and engineers can and do routinely compete for their non-federal assignments.

*Assertion 4. Legislative history clearly supports the application of the Brooks Act to all mapping services.*

GAO decisions do not support this assertion. For example, the GAO's leading case regarding mapping services is *Forest Service, Department of Agriculture—Request for Advance Decision*, B-233987, 233987.2, July 14, 1989, 68 Comp. Gen. 555, 89-2 CPD § 47, in which the GAO interpreted the 1988 Brooks Act revision clarifying the definition of A-E services. Prior to 1988, the Brooks Act defined architect and engineer services were defined as "those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their

employ may logically or justifiably perform." 40 USC 541(3) (1982).

In 1988, the Brooks Act was amended to encompass "surveying and mapping." In *Forest Service*, the Comptroller General modified its previous two-part test for Brooks Act applicability and noted the legislative history to the Brooks Act amendment stated that "the amendment is intended to clarify the definition of A-E services in response to General Accounting Office decisions issued since the enactment of the Brooks Act, 'which have had the effect of narrowing the application of the law, particularly in the field of surveying and mapping.'"

The *Forest Service* case also established that the new statutory definition clarified that "incidental services" refers to those services incidental to or part of A-E services, not, as previously held, incidental to an A-E project. As such, the Comptroller General restated its test for applicability of the Brooks Act as being a question of whether the service "is the type which is incidental to professional services of an architectural or engineering nature, and if so, whether the service is one which members of the architectural and engineering profession may logically or justifiably perform." GAO also stated that "The definition of A-E services includes traditional surveying and mapping services, whether or not incidental to an A-E project \* \* \*"

The Comptroller General interpreted the FAR language implementing the amended statute to leave to the contracting officer's discretion the decision whether a specific procurement falls within the Brooks Act, considering whether the services, "independent of any project, are of an A-E nature which should logically or justifiably be performed by A-E professionals." Because the applicability of Brooks Act procedures should be determined on a case-by-case basis, the Comptroller General chose not to establish a blanket rule in anticipation of future Forest Service procurements for road, trail and bridge construction, but concluded that it would review any such protest under its abuse of discretion standard.

GAO reaffirmed its use of this standard in subsequent protest decisions. See *White Shield, Inc.*, B-235522, Sept. 21, 1989, 68 Comp. Gen. 696, 89-2 CPD § 257 (sustaining a protest against use of non-Brooks Act procedures for cadastral mapping surveying services because there was no indication that the surveying and mapping services work involved was not traditional A-E in nature; the CO improperly relied on outdated case law

by using the test of whether the services were incidental to an A-E project, instead of the test of whether the services were traditional A-E services) and *Fodrea Land Surveys*, B-236413, Oct. 19, 1989, 89-2 CPD § 364 (denying a protest where agency planned to use Brooks Act procedures to secure cadastral land surveying services because the record did not indicate that the surveying and mapping services were not traditional A-E services).

2. *Comments that the Brooks Act applies to acquisition of some mapping services.*

Most respondents (including all Government respondents) concur that the Brooks Act does not apply to acquisition of all mapping services.

A few recommend that the FAR should be modified to make the Brooks Act procedures less applicable to the acquisition of mapping services.

Most respondents recommend no change to the FAR. Though these respondents offer different agency, mission-specific decision criteria for using Brooks Act procedures, all Government respondents agreed the exercise of this discretion was currently available in the FAR and strongly object to any change that would reduce or remove this flexibility.

*Response:* The Councils have determined, based on interpretation of the Brooks Act and decisions of the Comptroller General, reaffirmed by NCEES and NCARB guidance, that the best solution is to retain FAR Part 36 without revision.

Any criticism of the Brooks Act itself is outside the scope of this case.

Questions as to whether or not a specific procurement of mapping services comes within the scope of the Act, must continue to be resolved by the contracting officers and their technical representatives in line with the policies and procedures of each Federal agency.

Dated: April 12, 2005.

**Julia Wise,**

*Director, Contract Policy Division.*

[FR Doc. 05-7734 Filed 4-18-05; 8:45 am]

**BILLING CODE 6820-EP-S**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 225

[FRA-2005-20680, Notice No. 1]

RIN 2130-AB65

#### Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FRA is proposing to amend a portion of the accident reporting regulations. Specifically, FRA proposes to amend the method for calculating the monetary threshold for reporting rail equipment accidents/incidents. The amendment is necessary because, in 2001, the Bureau of Labor Statistics (BLS) ceased collecting and publishing railroad wage data used by FRA in the calculation. Consequently, FRA has had to seek a new source of publicly-available data. FRA is recommending the use of wage data collected and maintained by the Surface Transportation Board (STB) in place of the unavailable BLS wage data. As equipment data remain available from the BLS, no change is proposed in the source of the equipment component of the reporting threshold. The purpose of the rule is to ensure and maintain comparability between different years of accident data by having the threshold keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts.

**DATES:** (1) Written comments: Must be received on or before June 20, 2005. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) Public Hearing: If any person desires an opportunity for oral comment, he or she should notify FRA in writing and specify the basis for the request. FRA will schedule a public hearing in connection with this proceeding if the agency receives a written request for a hearing by June 3, 2005.

**ADDRESSES:** Anyone wishing to file a comment should refer to the FRA docket and notice numbers (Docket No. FRA-2005-20860, Notice No. 1). You may submit your comments and related

material by only one of the following methods:

By mail to the Docket Management System, United States Department of Transportation, room PL-401, 400 7th Street, SW., Washington, DC 20590-0001; or electronically through DOT's Web site for the Docket Management System at <http://dms.dot.gov>. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the "Help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents, as indicated in this preamble, will become part of this docket, and will be available for inspection or copying at room PL-401 on the Plaza Level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at <http://dms.dot.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Robert L. Finkelstein, Special Assistant to the Director, Office of Safety Analysis, RRS-22, Mail Stop 17, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-6280) or Roberta Stewart, Trial Attorney, Office of Chief Counsel, RCC-12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-6027).

#### SUPPLEMENTARY INFORMATION:

##### Background

A "rail equipment accident/incident" is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that causes reportable damages greater than the reporting threshold for the year in which the event occurs to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and materials. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b), (c). As revised, effective in 1997, paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996). As stated in the procedures in appendix B, data from the BLS are used to calculate the