

■ 2. In § 180.960, the table is amended by adding alphabetically the following polymers to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

Polymer	CAS No.
2-Propenoic acid, 2-methyl-, polymer with butyl 2-propenoate and ethenylbenzene, minimum number average molecular weight (in amu), 17,000	25036-16-2

[FR Doc. 2011-32072 Filed 12-13-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2, 24, 30, 70, 90, 91, and 188

[Docket No. USCG-2011-0363]

RIN 1625-AB71

Seagoing Barges

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; request for comments.

SUMMARY: By this direct final rule, the Coast Guard is revising regulations for the inspection and certification of seagoing barges to align with the language of the applicable statutes. The statutory language exempts certain seagoing barges from inspection. Through this rule, we seek to make the language of the regulation consistent with the language of the statute.

DATES: This rule is effective April 12, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via <http://www.regulations.gov> on or before February 13, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by February 13, 2012, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number USCG-2011-0363 using any one of the following methods:

• **Federal eRulemaking Portal:** <http://www.regulations.gov>.

• **Fax:** (202) 493-2251.

• **Mail:** Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

• **Hand delivery:** Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, email or call LT Douglas Tindall, Coast Guard; telephone (202) 372-1411, email Douglas.Tindall@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0363), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and insert "USCG-2011-0363" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-0363" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

DHS Department of Homeland Security
FR **Federal Register**
NEPA National Environmental Policy Act of 1969
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
NVIC Navigation and Vessel Inspection Circular
Pub. L. Public Law
U.S.C. United States Code

III. Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by February 13, 2012, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered adverse if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

IV. Basis and Purpose

The Coast Guard has the delegated authority to carry out the responsibilities related to vessel inspection enumerated in 46 U.S.C. 3301–3318. *See also* 46 U.S.C. 2104; DHS Delegation 0170.1(92b). Pursuant to this authority, the Coast Guard has issued regulations regarding inspection and certification of seagoing barges in 46 CFR parts 90 and 91.

In 1983, sec. 2101(32), Public Law 98–89, 97 Stat. 500 (46 U.S.C. 2101) redefined “seagoing barge” as a non self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line. Coast Guard regulations at 46 CFR 91.01–10(c) do not reflect the language change and instead refer to seagoing barges as vessels “on the high seas or ocean.” The purpose of this rule is to change the language in 46 CFR 91.01–10 from “on the high seas or ocean” to “beyond the Boundary Line” to reflect the language of Public Law 98–89.

In 1993, Congress exempted from inspection seagoing barges that are unmanned and not carrying hazardous material as cargo, or carrying a flammable or combustible liquid, including oil, in bulk. *See* Coast Guard Authorization Act of 1993, Public Law 103–206, 107 Stat. 2419 (46 U.S.C. 3302(m)). In 1993, the Coast Guard stopped requiring the specified seagoing barges to be inspected to conform with Public Law 103–206. However, the Coast Guard did not amend its regulations to reflect the exemption. The purpose of this rule is to change the language concerning seagoing barges in 46 CFR 90.05–25, 46 CFR 91.01–10, and the vessel inspection tables in 46 CFR parts 2, 24, 30, 70, 90, and 188 to reflect the exemption created by Public Law 103–206.

V. Discussion of the Rule

Coast Guard regulations contained in 46 CFR 91.01–10(c) provide for modification of the period of validity of the certificate of inspection for seagoing barges that: (1) Proceed on the high seas or ocean for the sole purpose of changing place of employment; or (2) make rare or infrequent voyages on the high seas or ocean and returning to the port of departure. This language does not reflect the language of Public Law 98–89 that redefined “seagoing barge” as a non self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line. In this rule, the Coast Guard changes the language of &46 CFR 91.01–10(c)(1)(i) and (ii) to clarify that modification of the period of validity of the certificate of inspection is

permissible for seagoing barges that make voyages beyond the “Boundary Line” vice the current language of “high seas or ocean.”

Coast Guard regulations contained in 46 CFR 90.05–25 dictates inspection and certification requirements for seagoing barges, but currently do not reflect the exemptions enacted by Public Law 103–206. In this rule, the Coast Guard modifies the language of 46 CFR 90.05–25 exempting seagoing barges from inspection and certification that are unmanned, and not carrying hazardous material as cargo, or a flammable or combustible liquid, including oil, in bulk as enacted by Public Law 103–206.

To promote consistency and readability we are revising 46 CFR 91.01–10(c)(1)(i), 46 CFR 91.01–10(c)(1)(ii), and 46 CFR 91.01–10(c)(2) to replace the language “non self-propelled vessels of 100 gross tons and over” with the term “seagoing barge” as enacted by Public Law 98–89 and contained in 46 CFR 90.10–36.

The remaining revisions are intended to make the language of the vessel inspection table published in the CFR consistent with the language of the revised regulations. The vessel inspection table is a visual representation of when vessels must be inspected, and is organized by type of vessel, method of propulsion, cargo, mission, etc. This is a single table that is published in the multiple sections of the CFR that deal with inspection of vessels, namely 46 CFR parts 2, 24, 30, 70, 90, and 188. We are revising the vessel inspection table by removing from row 4, column 4 the text “All seagoing barges except those covered by columns 2 and 3.” and adding, in its place, the text “All manned seagoing barges.”

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, 58 FR 51735 (Regulatory Planning and Review), as supplemented by Executive Order 13563, 76 FR 3821 (Improving Regulation and Regulatory Review), and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and

Budget has not reviewed it under these Executive Orders.

Sec. 2102 (32) of Public Law 98–89 redefined “seagoing barge” to mean “a non-self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line.”

Sec. 311 of Public Law 103–206 amended 46 U.S.C. 3302 to exempt certain seagoing barges from inspection and certification when the barges are unmanned and not carrying hazardous material as cargo, or a flammable or combustible liquid, including oil, in bulk. This rule will align 46 CFR 90.05–24, 46 CFR 91.01–10, and the vessel inspection table in 46 CFR 2, 24, 30, 70, 90, and 188 with Public Law 98–89 and Public Law 103–206.

Based on Public Law 98–89 and Public Law 103–206, seagoing barges that do not need inspection are those that meet all of the following characteristics:

1. Coastwise or oceans route as per sec. 2102(32), Public Law 98–89;
2. 100 gross tons or greater as per sec. 2102 (32), Public Law 98–89;
3. Unmanned as per sec. 311, Public Law 103–206; and
4. Not carrying hazardous material as cargo, or a flammable or combustible liquid, including oil, in bulk as per sec. 311, Public Law 103–206.

Because the Coast Guard is aligning the text of the regulations with the current inspections laws enacted in 1993, only barges that are manned, or carrying hazardous material as cargo or a flammable or combustible liquid, including oil, in bulk are inspected. If owners or operators choose to voluntarily inspect barges that are exempt from inspection, these owners or operators do so voluntarily and would voluntarily incur the cost. We estimate that there are no additional costs to implement this rule.

The benefit of this rule is in making the CFR consistent with the current law. As this statutory change has been in effect for more than 18 years, we expect this rule will not provide additional cost savings to industry.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As previously discussed, the purpose of this rule is to align the language concerning seagoing barges in 46 CFR 90.05–25, 46 CFR 91.01–10, and the vessel inspection tables in 46 CFR parts 2, 24, 30, 70, 90, and 188 with the language of Public Law 98–89 and Public Law 103–206. Public Law 98–89 redefined “seagoing barge” as a non-self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line. Public Law 103–206 exempted certain seagoing barges from inspection and certification that are unmanned, and not carrying hazardous material as cargo, or carrying a flammable or combustible liquid, including oil, in bulk.

This rule does not result in additional costs for small entities because the Coast Guard is aligning the text of the regulations with the current law. Since exempted barges have not been inspected for more than 10 years, this rule will impose no additional impacts (costs or cost savings) to small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the “Regulatory Information” section of this preamble.

C. Assistance for Small Entities

Under sec. 213(a) of the Contract with America Act of 1996, Public Law 104–121, 110 Stat. 847, we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LT Douglas Tindall at (202) 372–1411 or by email at Douglas.Tindall@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. This rule involves amendments to regulations which are editorial or procedural and merely align the text of the regulations with current law and Coast Guard practice. An environmental analysis checklist and a categorical exclusion determination are available in

the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 24

Marine safety.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 2, 24, 30, 70, 90, 91, and 188 as follows:

PART 2—VESSEL INSPECTIONS

- 1. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Subpart 2.45 also issued under the Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (*see* 46 U.S.C. App. Note prec. 1).

§ 2.01–7 [Amended]

- 2. In Table 2.01–7(a), row 4, column 4, of § 2.01–7, remove the text “All seagoing barges except those covered by columns 2 and 3.” and add, in its place, the text “All manned seagoing barges.”.

PART 24—GENERAL PROVISIONS

- 3. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; Pub. L. 103–206; 107 Stat. 2439; E.O. 12234; 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 24.01–5 [Amended]

- 4. In Table 24.01–5(a), row 4, column 4, of § 24.01–5, remove the text “All seagoing barges except those covered by columns 2 and 3.” and add, in its place, the text “All manned seagoing barges.”.

PART 30—GENERAL PROVISIONS

- 5. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.01–5 [Amended]

- 6. In Table 30.05–1(d), row 4, column 4, of § 30.01–5, remove the text “All seagoing barges except those covered by columns 2 and 3.” and add, in its place, the text “All manned seagoing barges.”.

PART 70—GENERAL PROVISIONS

- 7. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

§ 70.05–1 [Amended]

- 8. In Table 70.05–1(a), row 4, column 4, of § 70.05–1, remove the text “All seagoing barges except those covered by columns 2 and 3.” and add, in its place, the text “All manned seagoing barges.”.

PART 90—GENERAL PROVISIONS

- 9. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 90.05–1 [Amended]

- 10. In Table 90.05–1(a), row 4, column 4, of § 90.05–1, remove the text “All seagoing barges except those covered by columns 2 and 3.” and add, in its place, the text “All manned seagoing barges.”.

- 11. Revise § 90.05–25(a) to read as follows:

§ 90.05–25 Seagoing barge.

(a) All non-self-propelled vessels of 100 gross tons or more are subject to inspection when proceeding beyond the Boundary Line if they—

- (1) Carry a hazardous material as cargo; or
- (2) Carry a flammable or combustible liquid, including oil, in bulk; or
- (3) Are manned.

* * * * *

PART 91—INSPECTION AND CERTIFICATION

- 12. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307; 46 U.S.C. Chapter 701; Executive Order 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

- 13. Amend § 91.01–10 as follows:

- a. Revise paragraphs (c)(1)(i) and (ii); and

- b. In paragraph (c)(2), remove the words “seagoing barges of 100 gross tons and over,” and add, in their place, the words “inspected seagoing barges”.

The revisions read as follows:

§ 91.01–10 Period of validity for a Certificate of Inspection

* * * * *

(c)(1) * * *

- (i) Inspected seagoing barges proceeding beyond the Boundary Line for the sole purpose of changing place of employment.

- (ii) Inspected seagoing barges making rare or infrequent voyages beyond the Boundary Line and returning to the port of departure.

* * * * *

PART 188—GENERAL PROVISIONS

- 14. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 188.05–1 [Amended]

- 15. In Table 188.05–1(a), row 4, column 4, of § 188.05–1, remove the text “All seagoing barges except those covered by columns 2 and 3.” and add, in its place, the text “All manned seagoing barges.”.

Dated: December 6, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2011–32007 Filed 12–13–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 269

[Docket No. FRA–2009–0108; Notice No. 2]

RIN 2130–AC19

Alternate Passenger Rail Service Pilot Program

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

ACTION: Final rule.

SUMMARY: This final rule is in response to a statutory mandate that FRA complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008. The final rule develops this pilot program in conformance with the statutory directive.

DATES: This final rule is effective on February 13, 2012.

FOR FURTHER INFORMATION CONTACT: Alexander Roth, Office of Railroad Policy and Development, FRA, 1200 New Jersey Ave. SE., Washington, DC 20590 (telephone: (202) 493–6109); or Zeb Schorr, Attorney-Advisor, Office of Chief Counsel, FRA, 1200 New Jersey Ave. SE., Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6072).

SUPPLEMENTARY INFORMATION:

I. Background

By notice of proposed rulemaking (NPRM) published on September 7, 2011 (76 FR 55335), FRA proposed an alternate passenger rail service pilot program in response to a statutory mandate—specifically, § 214 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Public Law No. 110–432, Division B (Oct. 16, 2008). The comment period for the NPRM closed on November 7, 2011. FRA received written comments submitted by Ratp Development America, the Transportation Trades Department of the AFL–CIO, the American Short Line and Regional Railroad Association, the Association of Independent Passenger Rail Operators, Herzog Transit Services, Inc., First Transit, Veolia Transportation N.A., and two individuals.

General comments are addressed in this section, and more specific comments are addressed in the relevant sections of the preamble below. Some comments were generally supportive of the NPRM, and other comments were generally unsupportive of the NPRM.

A comment sought clarification regarding whether an eligible rail carrier under the pilot program could create a separate company to manage and operate the passenger operation, or whether it could enter into a private access rights agreement with an alternative rail passenger operator. This final rule develops a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak. This final rule does not prohibit an eligible rail carrier from creating a separate company to manage and/or operate the passenger rail service, or from entering into an agreement with a third party to manage and/or operate the passenger rail service. However, a pilot program petition must be submitted by a rail carrier or rail carriers that own the infrastructure as described in § 269.7 of this final rule. In addition, such information regarding the management and/or operation of the service would be relevant to FRA’s evaluation of the bid, and should be described in detail pursuant to § 269.9 of this final rule.

Several comments stated that the pilot program should allow a State to submit a petition (with the concurrence of the infrastructure owner), and/or that there should be a statutory role for States in the pilot program. Comments also stated that State involvement is particularly important to bidding on State-supported routes (which are eligible under the pilot program) as such routes are largely funded by States. A comment further stated that States should be able to participate in the pilot program process both out of a matter of fairness and to ensure that existing contracts between States and Amtrak would not be unconstitutionally impaired. As an initial matter, § 214 of PRIIA only provides that a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes may submit a petition. *See* 49 U.S.C. 24711(a)(1). Section 214 does not establish a statutory role for States in the pilot program petition process. In compliance with this statutory mandate, this final rule provides that only an eligible rail carrier may submit a petition. However, a State may participate in the pilot program process. Specifically, a