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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.

WHEN: Tuesday, April 9, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

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Federal Register

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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.

FEDERAL HOUSING FINANCE AGENCY

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 998

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1730

RIN 2590–AA64

Repeal of Disclosure Regulations

AGENCIES: Federal Housing Finance Agency; Federal Housing Finance Board; and Office of Federal Housing Enterprise Oversight.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is repealing two obsolete regulations issued by its predecessor agencies, the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (Finance Board) with respect to the entities regulated by OFHEO and by the Finance Board. The regulations being repealed govern public financial disclosures made by the entities with respect to certain federal securities laws. The Housing and Economic Recovery Act of 2008 obviates the need for these rules, making them obsolete and unnecessary. This final rule repeals the two regulations in their entirety.

DATES: This rule is effective on April 12, 2013.

FOR FURTHER INFORMATION CONTACT: Peggy K. Balsawer, Assistant General Counsel, Office of General Counsel, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024, (202) 649–3060 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background and Analysis

A. Creation of the Federal Housing Finance Agency

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, established FHFA as an independent agency of the Federal Government to regulate and oversee the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Bank(s)) (collectively, the regulated entities). HERA transferred to FHFA the supervisory and oversight responsibilities of OFHEO over the Enterprises, the oversight responsibilities of the Finance Board over the Banks and the Office of Finance (OF), and certain functions of the Department of Housing and Urban Development. *See id.* at section 1101, 122 Stat. 2661–63. FHFA's mission is to ensure, among other things, that the regulated entities operate ''in a safe and sound manner'' and that their activities ''foster liquid, efficient, competitive and resilient national housing finance markets.'' *Id.* at section 1102, 122 Stat. 2663–64. The regulations promulgated by OFHEO and the Finance Board continue to remain in effect with respect to the regulated entities until they are superseded by FHFA-issued regulations. *See id.* at sections 1301, 1302, 1311, 1312, 122 Stat. 2794–95, 2797–98.

B. Part 1730 (Disclosure of Financial and Other Information)

The Enterprises' securities were expressly exempted from the Securities Exchange Act of 1934 (the 1934 Act) by their respective charters. In 2002, both Enterprises agreed to voluntarily register their common stock with the Securities and Exchange Commission (SEC) under section 12(g) of the 1934 Act. Section 12(g) registration also subjects registrants to the requirement that they submit periodic disclosures to the SEC in accordance with the 1934 Act and associated SEC rules. OFHEO's issuance of Part 1730 in 2003 was expressly intended in part to ''facilitate the process'' of registration. 68 FR 16715, 16716 (Apr. 7, 2003). The rule provides that compliance with related disclosure obligations under the securities laws would satisfy OFHEO's disclosure requirements.

In July 2008, HERA expressly removed the exemption for Enterprise equity securities from sections 12, 13, 14 and 16 of the 1934 Act. *See* HERA section 1112, 122 Stat. 2677, adding 1934 Act section 38(a), 15 U.S.C. Section 78oo(a). As a result, the Enterprises were statutorily required to register their equity securities under section 12 of the 1934 Act and comply with the SEC disclosure rules attendant to registration. The need for OFHEO's regulation was thus obviated by Congressional action, and consequently the regulation is obsolete and unnecessary, warranting repeal and removal from the Code of Federal Regulations.[1] Therefore, FHFA is hereby repealing part 1730 in its entirety.

C. Part 998 (Registration of Federal Home Loan Bank Equity Securities)

Part 998 was issued by the Finance Board to require each Bank to register (voluntarily from the perspective of the 1934 Act) a class of its equity securities under section 12(g) of the 1934 Act and make the attendant required periodic disclosures to the SEC. Prior to the Finance Board's issuance of Part 998, the Banks did not register their equity securities under the 1934 Act, but had been supplying information to the OF, the Banks' fiscal agent, to enable the OF to prepare combined annual and quarterly financial reports on behalf of the entire Bank system. However, those reports were submitted to the Finance Board rather than the SEC, and otherwise did not fully comply with 1934 Act standards and associated SEC rules.

The enactment of HERA in 2008 imposed a statutory requirement on each Bank to register a class of its common stock under section 12(g) and continue to maintain such registration regardless of the number of members holding such stock at any given time. *See* HERA section 1112, 122 Stat. 2677, adding 1934 Act section 38(b), 15 U.S.C.

[1] The 1934 Act permits termination of registration under some narrow circumstances. In the unlikely event an Enterprise becomes eligible to terminate its securities registration during conservatorship, FHFA would take appropriate action, should the Conservator consent to such a course, to ensure that periodic disclosures are not suspended.

Section 78oo(b)(1).[2] As a result of SEC mandatory registration, each Bank is now required to make the periodic public disclosures made by similarly situated SEC registrants. Thus, the reason for the Finance Board regulation was superseded by Congressional action, and consequently the regulation is obsolete and warrants repeal and removal from the Code of Federal Regulations. Therefore, FHFA is hereby repealing part 998 in its entirety.

D. Considerations of Differences Between the Banks and the Enterprises

Section 1201 of HERA requires FHFA's Director, when promulgating regulations ''of general applicability and future effect'' relating to the Banks, to consider the differences between the Banks and the Enterprises as they may relate to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability. HERA section 1201, 122 Stat. 2782 (*amending* 12 U.S.C. 4513). This final rule does not impose any new obligations on the Banks, but instead simply removes an existing Finance Board regulation that, as a result of the passage of HERA and changed circumstances, is obsolete, unnecessary and no longer of any regulatory purpose. The repeal of part 998 of title 12 of the Code of Federal Regulations therefore would not have any ''future effect'' on the Banks. For these reasons, a section 1201 analysis is not required for this final rule.

II. Notice and Public Participation

FHFA finds that good cause exists under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act for adopting these rule changes as a final rule without public notice and comment because the subject regulations currently have no regulatory purpose or value and thus their removal would be insignificant in nature and impact and of no consequence to the industry and the public. The provisions of part 1730 were expressly intended to facilitate the Enterprises' securities registration and associated financial disclosures, which had already been agreed to by the Enterprises. These requirements have subsequently been independently mandated under HERA. Similarly, the provisions of part 998 relate solely to the Finance Board's requirement that the Banks register their equity securities under the 1934 Act and make attendant financial disclosures. These requirements too were subsequently mandated by the provisions of HERA. Neither of these regulations includes provisions that are appropriate for FHFA to carry over and incorporate into its own regulations, and thus they should be repealed and removed from the Code of Federal Regulations. For these reasons, FHFA believes that public comments are unnecessary and would serve no purpose.

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks and Enterprises, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore in accordance with section 605(b) of the RFA, FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 998

Credit, Federal home loan banks, Financial disclosure, Government-sponsored enterprises, Records, Reporting and recordkeeping, Securities disclosure.

12 CFR Part 1730

Financial disclosure, Government-sponsored enterprises, Records, Reporting and recordkeeping.

Accordingly, for reasons stated in the Supplementary Information and under the authority of 12 U.S.C. 4511, 4512, 4513, and 4526, FHFA amends subchapter M of chapter IX and subchapter C of chapter XVII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER M—FEDERAL HOME LOAN BANK DISCLOSURES

PART 998—[REMOVED]

■ 1. Remove part 998.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER C—SAFETY AND SOUNDNESS

PART 1730—[REMOVED]

■ 2. Remove part 1730.

Dated: March 5, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013–05765 Filed 3–12–13; 8:45 am]

BILLING CODE 8070–01–P

[2] This provision applies only to the Banks and effectively precludes the termination of a Bank's registration.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0721; Directorate Identifier 2012–NM–076–AD; Amendment 39–17356; AD 2013–03–22]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD was prompted by reports that airplanes with a Class C cargo (baggage) compartment have liners that do not meet flammability requirements. This AD requires replacing the existing cargo compartment liners with liners that comply. We are issuing this AD to prevent inadequate fire protection in the cargo compartment and consequent uncontrolled fire.

DATES: This AD becomes effective April 17, 2013.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in this AD as of April 17, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems

Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 19, 2012 (77 FR 42457). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> It was found that the cargo compartment liners installed on CL–600–2B19 configured with Class C cargo compartment do not all meet the flammability requirements. Non-compliant cargo compartment liners may not provide adequate fire protection and could lead to an uncontrolled baggage bay fire.
>
> This [Canadian] AD mandates the replacement of existing cargo compartment liners with compliant cargo compartment liners.
>
> Aeroplanes modified with [Transport Canada Civil Aviation] Supplemental Type Certificate (STC) Number SA01–19 Issue No. 1 [corresponding FAA STC ST01292NY, amended July 7, 2003 *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/1BB5140B1D3A130086256D7A006DF851?OpenDocument&Highlight=st01292ny*] Cargo Liner Replacement Panels are also affected by this [Canadian] AD.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Change Applicability

Air Wisconsin (AWI) requested that we change the applicability to either specify airplane serial numbers (S/Ns) 7003 though 7067 inclusive, and S/Ns 7069 through 7857 inclusive, including airplanes modified by STC ST01292NY, amended July 7, 2003 (*http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/1BB5140B1D3A130086256D7A006DF851?OpenDocument&Highlight=st01292ny*); or specify the airplanes listed in Bombardier Service Bulletin 601R–25–187, Revision A, dated September 1, 2011; Bombardier Service Bulletin 601R–25–198, dated September 1, 2011; and Bombardier Service Bulletin 601R–25–199, dated September 1, 2011. AWI stated that the NPRM (77 FR 42457, July 19, 2012) specifies the applicability as airplane S/Ns 7003 and subsequent, yet each of these Bombardier service bulletins describes the effectivity as airplane S/Ns 7003 thru 7067 inclusive and S/Ns 7069 thru 7857 inclusive, and states that the service bulletin was ''validated'' on airplane S/N 7362.

We do not agree with the commenter's request to change the applicability. The intent of this AD is to ensure that any Model CL–600–2B19 airplane configured with a Class C cargo compartment be equipped with compliant cargo compartment liners. The Bombardier service information referenced in paragraphs (g)(1) through (g)(3) of this AD has listed airplanes with known Class C cargo compartments. In order to ensure that any subsequently converted airplanes will be equally equipped with compliant Class C cargo compartment liners, this AD must apply to any Model CL–600–2B19 airplane configured with a Class C cargo compartment. We have not changed the AD in this regard.

Requests To Extend Compliance Time

AWI and Pinnacle Airlines (FLG) requested that we extend the compliance time from 28 months to 36 months after the effective date of the AD. Both commenters stated that the service information recommends a compliance time of 36 months. Additionally, both commenters stated that the manufacturer has yet to supply the necessary parts kits. FLG noted that, without the parts kits, it could be put in a position of parking its airplanes. AWI stated that, without kits available, airplanes that are currently having their heavy check visits completed are without the benefit of the cargo compartment liner modification being accomplished.

We do not agree with the commenters' requests to extend the compliance time. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the modification. Bombardier has confirmed with the FAA and Transport Canada Civil Aviation (TCCA) that parts are available to the operators, and the availability will be such that the operators will be able to incorporate the modification within the compliance time. However, under the provisions of paragraph (k) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Change Date of Parts Installation Prohibition or Remove Prohibition

AWI requested that we either remove the paragraph or change the date of the prohibition of the installation of the old style liners (paragraph (i) of the NPRM (77 FR 42457, July 19, 2012)) from the effective date of the AD to 28 months after the effective date of the AD. AWI stated that in order to maintain a pre-modification airplane until the modification required by paragraph (g) of the NPRM is performed, the operator needs to have the flexibility to install the old style liners when replacing any that might become damaged.

We agree to change the date of the prohibition of the installation of the old style liners for certain airplanes. We have changed paragraph (j)(1) of this AD (referred to as paragraph (i) of the NPRM (77 FR 42457, July 19, 2012)) to state that the installation of the old style liners for airplane S/Ns 7003 through 7857 inclusive is prohibited after completion of the cargo compartment liner modification required by paragraph (g) of this AD, which is required within 28 months after the effective date of this AD.

We have also added new paragraph (j)(2) to this AD, which states that the installation of the old style liners for airplane S/Ns 7858 and subsequent is prohibited as of the effective date of this AD. Airplane S/Ns 7858 and subsequent are/were not delivered with a class C cargo compartment. Paragraph (j)(2) of this AD prevents these airplanes from having the identified unsafe cargo liners installed if they are converted to class C cargo compartments.

Request To Use Certain STC Parts

AWI requested that we change the NPRM (77 FR 42457, July 19, 2012) to allow the installation of inserts, which are necessary for the installation of the rear wall liners in the floor panels specified in STC ST00560NY, amended June 29, 2001 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/78C85CD7FA9FAFA585256CC2006A74D0?OpenDocument&Highlight=st00560ny*). AWI stated that Bombardier Service Bulletin 601R–25–187, Revision A, dated September 1, 2011, does not mention these aftermarket panels and recognizes only the original equipment manufacturer floor panels.

We agree with the commenter's request. We have added new paragraph (h) to this AD, which states that Comtek Advanced Structures floor panels

approved under STC ST00560NY, amended June 29, 2001 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/78C85CD7FA9FAFA585256CC2006A74D0?OpenDocument&Highlight=st00560ny*), are considered equivalent to the original equipment floor panels described in Bombardier Service Bulletin 601R–25–187, Revision A, dated September 1, 2011, and may be used in lieu of the floor panels described in Bombardier Service Bulletin 601R–25–187, Revision A, dated September 1, 2011. We have re-identified subsequent paragraphs accordingly.

Request To Approve Past or Future Repairs

AWI requested that we make accommodation in the NPRM (77 FR 42457, July 19, 2012) for previously approved or future approved repairs/repair schemes without the need for alternative methods of compliance (AMOC) to do those repairs. AWI stated that the cargo compartment liners take quite a bit of abuse during loading/unloading operations and are frequently in need of repair to maintain serviceability. AWI pointed out that there are existing approved repairs for the liners in the airplane maintenance manual and/or service repair manual.

We disagree with the commenter's request. This AD requires the installation of compliant cargo compartment liners. After accomplishing the actions required by this AD, maintenance and/or preventive maintenance under 14 CFR part 45 is permitted provided the maintenance does not result in changing the AD-mandated configuration (reference 14 CFR 39.7). We have not changed the AD in this regard.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously–and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 42457, July 19, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 42457, July 19, 2012).

Costs of Compliance

We estimate that this AD will affect 574 products of U.S. registry. We also estimate that it will take about 87 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $43,559 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $29,247,596, or $50,954 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 42457, July 19, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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. The FAA amends § 39.13 by adding the following new AD:

2013–03–22 Bombardier, Inc.: Amendment 39–17356. Docket No. FAA–2012–0721; Directorate Identifier 2012–NM–076–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 17, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers (S/Ns) 7003 and subsequent, configured with a Class C cargo compartment, including airplanes modified by Supplemental Type Certificate (STC) ST01292NY, amended July 7, 2003 (*http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/1BB5140B1D3A130086256D7A006DF851?OpenDocument&Highlight=st01292ny*).

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by reports that airplanes with a Class C cargo (baggage) compartment have liners that do not meet flammability requirements. We are issuing this AD to prevent inadequate fire protection

in the cargo compartment and consequent uncontrolled fire.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Actions

Within 28 months after the effective date of this AD, replace the cargo compartment liners, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraphs (g)(1) through (g)(3) of this AD, except as provided by paragraph (h) of this AD. For airplanes that do not have a configuration specified in paragraphs (g)(1) through (g)(3) of this AD: Prior to accomplishing the replacement, convert the cargo compartment liner to one of the configurations specified in paragraphs (g)(1) through (g)(3) of this AD, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent). To meet the requirements of this AD, the applicable Bombardier service bulletin or COMTEK service bulletin must be followed in its entirety, except as provided by paragraph (h) of this AD, with no mixing of Bombardier-supplied or COMTEK-supplied liners.

(1) For airplanes with North American cargo compartment configuration: Bombardier Service Bulletin 601R–25–187, Revision A, dated September 1, 2011; or COMTEK Service Bulletin COMSB–25–52–001, Revision A, dated December 29, 2011.

Note (1) to paragraph (g)(1) of this AD: COMTEK Service Bulletin COMSB–25–52–001, Revision A, dated December 29, 2011, installs STC ST01292NY amended July 7, 2003 (*http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/1BB5140B1D3A130086256D7A006DF851?OpenDocument&Highlight=st01292ny*), (which corresponds to TCCA STC SA01–19, Issue 2, dated December 21, 2011 (*http://www.regulations.gov/contentStreamer?objectId=0900006481216f85&disposition=attachment&contentType=pdf*)) flammability-compliant cargo liner replacement panels.

(2) For airplanes with European cargo compartment configuration: Bombardier Service Bulletin 601R–25–198, dated September 1, 2011.

(3) For airplanes with Universal cargo compartment configuration: Bombardier Service Bulletin 601R–25–199, dated September 1, 2011.

(h) Alternative Floor Panel

Comtek Advanced Structures floor panels approved under STC ST00560NY, amended June 29, 2001 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/78C85CD7FA9FAFA585256CC2006A74D0?OpenDocument&Highlight=st00560ny*), are considered equivalent to the original equipment floor panels described in Bombardier Service Bulletin 601R–25–187, Revision A, dated September 1, 2011, and may be used in lieu of the floor panels described in Bombardier Service Bulletin 601R–25–187, Revision A, dated September 1, 2011.

(i) Credit for Previous Actions

This paragraph provides credit for certain actions specified in paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 601R–25–187, dated July 21, 2011, which is not incorporated by reference in this AD.

(j) Parts Installation Prohibition

(1) For airplane S/Ns 7003 through 7857 inclusive: After completing the actions required by paragraph (g) of this AD, no person may install a cargo compartment liner, identified as ''Pre-SB Part Number'' in paragraph 1.M. of the applicable Bombardier service bulletins identified in paragraphs (g)(1) through (g)(3) of this AD; ''Pre-SB P/N'' in paragraph 3.D. of COMTEK Service Bulletin COMSB–25–52–001, Revision A, dated December 29, 2011; or FAA STC ST01292NY, amended July 7, 2003 (*http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/1BB5140B1D3A130086256D7A006DF851?OpenDocument&Highlight=st01292ny*); on any airplane.

(2) For airplane S/Ns 7858 and subsequent: As of the effective date of this AD, no person may install a cargo compartment liner, identified as ''Pre-SB Part Number'' in paragraph 1.M. of the Bombardier service bulletins identified in paragraphs (g)(1) through (g)(3) of this AD; ''Pre-SB P/N'' in paragraph 3.D. of COMTEK Service Bulletin COMSB–25–52–001, Revision A, dated December 29, 2011; or FAA STC ST01292NY, amended July 7, 2003 (*http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/1BB5140B1D3A130086256D7A006DF851?OpenDocument&Highlight=st01292ny*); on any airplane.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2012–11, dated March 23, 2012, and the service information identified in paragraphs (l)(1)(i) through (l)(1)(iv) of this AD, for related information.

(i) Bombardier Service Bulletin 601R–25–187, Revision A, dated September 1, 2011.

(ii) Bombardier Service Bulletin 601R–25–198, dated September 1, 2011.

(iii) Bombardier Service Bulletin 601R–25–199, dated September 1, 2011.

(iv) COMTEK Service Bulletin COMSB–25–52–001, Revision A, dated December 29, 2011.

(2) For Bombardier service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bombardier Service Bulletin 601R–25–187, Revision A, dated September 1, 2011.

(ii) Bombardier Service Bulletin 601R–25–198, dated September 1, 2011.

(iii) Bombardier Service Bulletin 601R–25–199, dated September 1, 2011.

(iv) COMTEK Service Bulletin COMSB–25–52–001, Revision A, dated December 29, 2011.

(3) For Bombardier service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) For COMTEK service information identified in this AD, contact Comtek Advanced Structures, 1360 Artisans Court, Burlington, Ontario, Canada, L7L 5Y2; telephone 905–331–8121; fax 905–331–8125; Internet *http://www.comtekadvanced.com.*

(5) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://*

www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued in Renton, Washington, on February 7, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04634 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1224; Directorate Identifier 2012–NM–112–AD; Amendment 39–17372; AD 2013–04–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This AD was prompted by a report of an uncommanded slide back of the co-pilot seat to the end stop position. This AD requires a one-time inspection for a part number, a tensile test of the affected seats, and corrective actions if necessary. We are issuing this AD to detect and prevent unwanted movement of a pilot or co-pilot seat in the horizontal direction, which could lead to inadvertent input on the flight control commands and possibly result in loss of controllability of the airplane.

DATES: This AD becomes effective April 17, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 17, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 10, 2012 (77 FR 73343). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> During a steep climb manoeuvre that was flown with a high pitch (25°) for training of ground threat avoidance, an Airbus A310 aeroplane experienced an uncommanded slide back of the co-pilot seat to the end stop position.
>
> Investigation revealed that on the affected seat, the disc key inside the clutch was broken. SOGERMA Service Bulletin (SB) No 2510112–25–813, which addresses the previous end stop switch issue and which is covered by [European Aviation Safety Agency] EASA AD 2010–0070 [which corresponds to FAA AD 2011–06–09, Amendment 39–16634 (76 FR 15805, March 22, 2011)] had been accomplished on this seat, but due to seizure, the key failure was not detected at time. This broken disc key caused a jamming between the gear and the shaft of the clutch. Despite this failure, the torque transmission between the gear and the shaft was sufficient for normal operation, but not to keep the seat in locked position during climbing, due to the high longitudinal loads generated by the high aeroplane incidence.
>
> This condition, if not detected and corrected, could cause the pilot to lose contact with the controls, leading to an inadvertent input on the flight control commands during take-off or climb, possibly resulting in loss of control of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection [part number (P/N) inspection of the seats and tensile test] of the affected seats and, depending on findings, accomplishment of applicable corrective action(s) [replacing the seat or modifying the seat by replacing actuator P/N RT19H4FX with a new actuator].

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 73343, December 10, 2012), or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 73343, December 10, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 73343, December 10, 2012).

Costs of Compliance

We estimate that this AD will affect 161 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $4,523 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $741,888, or $4,608 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 73343, December 10, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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. The FAA amends § 39.13 by adding the following new AD:

2013–04–14 Airbus: Amendment 39–17372. Docket No. FAA–2012–1224; Directorate Identifier 2012–NM–112–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 17, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by a report of an uncommanded slide back of the co-pilot seat to the end stop position. We are issuing this AD to detect and prevent unwanted movement of a pilot or co-pilot seat in the horizontal direction, which could lead to inadvertent input on the flight control commands possibly resulting in loss of controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Part Number (P/N) Inspection

Within 6 months after the effective date of this AD, except as provided by paragraph (h) of this AD: Do an inspection to determine the part number of each SOGERMA pilot and co-pilot seat installed on the airplane. As an alternative, a review of the maintenance or delivery records may be used to determine the part number of the pilot and co-pilot seat if the part number can be positively determined from that review.

(h) Seats That Have Been Previously Tested or Modified

SOGERMA pilot and co-pilot seats having P/N 2510112 series (all suffixes) or P/N 2510113 series (all suffixes) that, before the effective date of this AD, have already passed the tensile test specified in paragraph (i) of this AD, or have been modified as specified in the Operating Instructions of EADS SOGERMA Inspection Service Bulletin 2510112–25–898, dated April 25, 2012, are not required to be tested, and are considered to be compliant with the requirements of this AD.

(i) Tensile Test

If, during the inspection required by paragraph (g) of this AD, the part number of a seat is identified as P/N 2510112 series (all suffixes), or P/N 2510113 series (all suffixes): Within 6 months after the effective date of this AD, do a tensile test on that seat, in accordance with Airbus Alert Operators Transmission (AOT) A25W001–12, dated June 6, 2012.

(j) Replacement or Modification

If the tensile test sample does not break off while performing the test required by paragraph (i) of this AD, before further flight, do one of the actions specified in paragraph (j)(1) or (j)(2) of this AD.

(1) Replace the affected seat with a new or serviceable seat that has passed the tensile test specified in paragraph (i) of this AD. Do the replacement in accordance with Airbus AOT A25W001–12, dated June 6, 2012.

(2) Modify the seat by replacing actuator P/N RT19H4FX of the affected seat, in accordance with the Operating Instructions of EADS SOGERMA Inspection Service Bulletin 2510112–25–898, dated April 25, 2012; or Airbus AOT A25W001–12, dated June 6, 2012.

(k) Parts Installation Limitations

As of the effective date of this AD, no person may install a SOGERMA pilot or co-pilot seat having P/N 2510112 series, or P/N 2510113 series, on any airplane unless it has passed the tensile test required by paragraph (i) of this AD, or has been replaced or modified as required by paragraph (j) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Airworthiness Directive 2012–0102, dated June 8, 2012, and the service information specified in paragraphs (m)(1) and (m)(2) of this AD, for related information.

(1) Airbus Alert Operators Transmission A25W001–12, dated June 6, 2012.

(2) EADS SOGERMA Inspection Service Bulletin 2510112–25–898, dated April 25, 2012.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Alert Operators Transmission A25W001–12, dated June 6, 2012.

(ii) EADS SOGERMA Inspection Service Bulletin 2510112–25–898, dated April 25, 2012.

(3) For Airbus service information identified in this AD, contact Airbus SAS –EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) For EADS SOGERMA service information identified in this AD, contact EADS SOGERMA, Zone Industrielle de l'Arsenal, CS. 60109, 17303 Rochefort, Cedex France; phone: 33 5 46 82 84 84; fax: 33 5 46 82 88 13; email: *SCOD1@sogerma.eads.net;* Internet: *http://www.sogerma.eads.net.*

(5) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on February 21, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04628 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2009–0675; Amendment No. 121–363]

RIN 2120–AJ43

Activation of Ice Protection

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is correcting a final rule published on August 22, 2011 (76 FR 52241). In that rule, the FAA amended its regulations to create new operating rules for flight in icing conditions. This document corrects an error in the amendatory language of the final rule which inadvertently led to the omission of the new section from the Code of Federal Regulations.

DATES: Effective March 13, 2013.

FOR FURTHER INFORMATION CONTACT: For operational questions, contact Charles J. Enders, Air Carrier Operations Branch, AFS–220, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 493–1422; facsimile (202) 267–5229; email *Charles.J.Enders@faa.gov.*

For aircraft certification questions, contact Robert Jones, Propulsion/Mechanical Systems Branch, ANM–112, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1234; facsimile (425) 227–1007; email *Robert.C.Jones@faa.gov.*

For legal questions concerning this action, contact Doug Anderson, Office of Regional Counsel, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007; email *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2011, the FAA published a final rule entitled, ''Activation of Ice Protection,'' (76 FR 52241).

In that final rule the FAA added operating rules for flight in icing conditions. For certain airplanes certificated for flight in icing, the new standards require either installation of ice detection equipment or changes to the airplane flight manual to ensure timely activation of the airframe icing protection system. The FAA inadvertently wrote the amendatory language incorrectly to say that we were revising § 121.321 when, in fact, we were creating that section and adding it to the CFR.

The Technical Amendment

This technical amendment corrects the amendatory language of the final rule to indicate that § 121.321 is being added, not revised.

Because the change in this technical amendment results in no substantive change, we find good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 2. Add new § 121.321 to read as follows:

§ 121.321 Operations in icing.

After October 21, 2013, no person may operate an airplane with a certificated maximum takeoff weight less than 60,000 pounds in conditions conducive to airframe icing unless it complies with this section. As used in this section, the phrase ''conditions conducive to airframe icing'' means visible moisture at or below a static air temperature of 5 °C or a total air temperature of 10 °C, unless the approved Airplane Flight Manual provides another definition.

(a) When operating in conditions conducive to airframe icing, compliance must be shown with paragraph (a)(1), or (2), or (3) of this section.

(1) The airplane must be equipped with a certificated primary airframe ice detection system.

(i) The airframe ice protection system must be activated automatically, or manually by the flightcrew, when the primary ice detection system indicates activation is necessary.

(ii) When the airframe ice protection system is activated, any other procedures in the Airplane Flight Manual for operating in icing conditions must be initiated.

(2) Visual cues of the first sign of ice formation anywhere on the airplane and a certificated advisory airframe ice detection system must be provided.

(i) The airframe ice protection system must be activated when any of the visual cues are observed or when the advisory airframe ice detection system indicates activation is necessary, whichever occurs first.

(ii) When the airframe ice protection system is activated, any other procedures in the Airplane Flight Manual for operating in icing conditions must be initiated.

(3) If the airplane is not equipped to comply with the provisions of paragraph (a)(1) or (2) of this section, then the following apply:

(i) When operating in conditions conducive to airframe icing, the airframe ice protection system must be activated prior to, and operated during, the following phases of flight:

(A) Takeoff climb after second segment,

(B) En route climb,

(C) Go-around climb,

(D) Holding,

(E) Maneuvering for approach and landing, and

(F) Any other operation at approach or holding airspeeds.

(ii) During any other phase of flight, the airframe ice protection system must be activated and operated at the first sign of ice formation anywhere on the airplane, unless the Airplane Flight Manual specifies that the airframe ice protection system should not be used or provides other operational instructions.

(iii) Any additional procedures for operation in conditions conducive to icing specified in the Airplane Flight Manual or in the manual required by § 121.133 must be initiated.

(b) If the procedures specified in paragraph (a)(3)(i) of this section are specifically prohibited in the Airplane Flight Manual, compliance must be shown with the requirements of paragraph (a)(1) or (2) of this section.

(c) Procedures necessary for safe operation of the airframe ice protection system must be established and documented in:

(1) The Airplane Flight Manual for airplanes that comply with paragraph (a)(1) or (2) of this section, or

(2) The Airplane Flight Manual or in the manual required by § 121.133 for airplanes that comply with paragraph (a)(3) of this section.

(d) Procedures for operation of the airframe ice protection system must include initial activation, operation after initial activation, and deactivation. Procedures for operation after initial activation of the ice protection system must address—

(1) Continuous operation,

(2) Automatic cycling,

(3) Manual cycling if the airplane is equipped with an ice detection system that alerts the flightcrew each time the ice protection system must be cycled, or

(4) Manual cycling based on a time interval if the airplane type is not equipped with features necessary to implement (d)(1)–(3) of this section.

(e) System installations used to comply with paragraph (a)(1) or (a)(2) of this section must be approved through an amended or supplemental type certificate in accordance with part 21 of this chapter.

Issued in Washington, DC, on March 7, 2013.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2013–05791 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[TD 9604]

RIN 1545–BJ44

Taxable Medical Devices; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9604) that were published in the **Federal Register** on Friday, December 7, 2012 (77 FR 72924). The final regulations provide guidance on the excise tax imposed on the sale of certain medical devices, enacted by the Health Care and Education Reconciliation Act of 2010 in conjunction with the Patient Protection and Affordable Care Act.

DATES: This correction is effective on March 13, 2013 and is applicable after December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Natalie Payne, Michael Beker, or Stephanie Bland, at (202) 622–3130 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9604) that are the subject of this correction is under section 4191 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9604) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9604), that are the subject of FR Doc. 2012–29628, are corrected as follows:

1. On page 72925, column 1, in the preamble, under the paragraph heading ''Background'', second full paragraph of the column, lines 2 through 9, the language ''regulations identified two issues that the IRS and the Treasury Department will study further and on which the IRS and the Treasury Department have requested additional comments. Those issues are discussed later in this preamble. Comments with regard to those issues should be submitted in'' is corrected to read ''regulations identified one issue that the IRS and the Treasury Department will study further and on which the IRS and the Treasury Department have requested additional comments. That issue is discussed later in this preamble. Comments with regard to that issue should be submitted in''.

2. On page 72926, column 2, in the preamble, under the paragraph heading ''Humanitarian Use Devices'', line 6 from the bottom of the column, the language ''excluding HUDs from the definition of '' is corrected to read ''excluding HUDs from the definition of a''.

3. On page 72927, column 3, under the paragraph heading ''Nonexclusivity of Factors'', line 4 from the bottom of the column, the language ''the final regulations include seven'' is corrected to read ''the final regulations include eight''

4. On page 72928, column 2, under the paragraph heading ''Cost'', line 6 from the bottom of the column, the language ''used in hospitals, doctors offices and'' is corrected to read ''used in hospitals, doctors' offices and''.

5. On page 72929, column 2, under the paragraph heading ''Documents Submitted for FDA Notification or Approval'', line 3 from the top of the column, the language ''by the general public for individual use.'' is corrected to read ''by the general public at retail for individual use.''

6. On page 72929, column 3, under the paragraph heading ''Capped Rental Devices'', first full paragraph of the column, line 2, the language ''in consultation with the Center for'' is corrected to read ''in consultation with the Centers for''.

7. On page 72930, column 2, under the paragraph heading ''A. Proposed Regulations'', line 6, the language ''of taxable medical device to the FDA's'' is corrected to read ''of a taxable medical device to the FDA's''.

8. On page 72931, column 1, under the paragraph heading ''Installment Sales, Leases, and Long-Term Contracts'', line 3 from the bottom of the column, the language ''Payments made pursuant to a contract'' is corrected to read ''Payments made on or after January 1, 2013, pursuant to a contract''.

9. On page 72932, column 2, under the paragraph heading ''Consolidated Form 637 Registration'', line 3, the language ''effectuate tax-free sales. Several'' is corrected to read ''effectuate tax-free sales for further manufacture or export. Several''.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2013–05704 Filed 3–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[TD 9604]

RIN 1545–BJ44

Taxable Medical Devices; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting Amendment.

SUMMARY: This document contains corrections to final regulations (TD 9604) that were published in the **Federal Register** on Friday, December 7, 2012 (77 FR 72924). The final regulations provide guidance on the excise tax imposed on the sale of certain medical devices, enacted by the Health Care and Education Reconciliation Act of 2010 in conjunction with the Patient Protection and Affordable Care Act.

DATES: This correction is effective on March 13, 2013 and is applicable after December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Natalie Payne, Michael Beker, or Stephanie Bland, at (202) 622–3130 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9604) that are the subject of this correction is under section 4191 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9604) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 48 is corrected by making the following correcting amendments:

PART 48—MANUFATURERS AND RETAILERS EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 48 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 48.4191–2 is amended by revising:

■ 1. The second sentence of paragraph (b)(2).

■ 2. The last sentence of paragraph (b)(2)(iv) *Example 5.,* and *Example 6.*

■ 3. Paragraph (b)(2)(iv) *Example 7.*

■ 4. The last sentence of paragraph (b)(2)(iv) *Example 8.*, *Example 11.*, and *Example 13.*

The revisions read as follows:

§ 48.4191–2 Taxable medical device.

* * * * *

(b) * * *

(2) * * * A device will be considered to be of a type that is generally purchased by the general public at retail for individual use if it is regularly available for purchase and use by individual consumers who are not medical professionals, and if the design of the device demonstrates that it is not primarily intended for use in a medical institution or office or by a medical professional. * * *

* * * * *

(iv) * * *

Example 5. * * * Based on the totality of the facts and circumstances, the mobile x-ray systems are not devices that are of a type that are generally purchased by the general public at retail for individual use.

Example 6. * * * Accordingly, the pregnancy test kits are devices that are of a type that are generally purchased by the general public at retail for individual use.

Example 7. X manufactures blood glucose monitors, blood glucose test strips, and lancets. X sells the blood glucose monitors, test strips, and lancets to distributors Y and Z, which, in turn, sell the monitors, test strips, and lancets to medical institutions and offices, medical professionals, and retail businesses. The FDA requires manufacturers of blood glucose monitors, test strips, and lancets to list the items as devices with the FDA. The FDA classifies the blood glucose monitors under 21 CFR part 862 (Clinical Chemistry and Clinical Toxicology Devices) and product code NBW. The FDA classifies the test strips under 21 CFR part 862 (Clinical Chemistry and Clinical Toxicology Devices) and product code NBW. The FDA classifies the lancets under 21 CFR part 878 (General and Plastic Surgery Devices) and product code FMK.

The blood glucose monitors and test strips are included in the FDA's online IVD Home Use Lab Tests (Over-the-Counter Tests) database. Therefore, the blood glucose monitors and test strips fall within the safe harbor set forth in paragraph (b)(2)(iii)(A) of this section. Further, the FDA product code name for NBW is ''System, Test, Blood Glucose, Over the Counter.'' Therefore, the blood glucose monitors and test strips also fall within the safe harbor set forth in paragraph (b)(2)(iii)(C) of this section.

In addition, the lancets are supplies necessary for the effective use of DME as described in section 110.3 of chapter 15 of the Medicare Policy Benefit Manual. Therefore, the lancets fall within the safe harbor set forth in paragraph (b)(2)(iii)(D)(*5*) of this section.

Accordingly, the blood glucose monitors, test strips, and lancets are devices that are of a type that are generally purchased by the general public at retail for individual use.

Example 8. * * * Accordingly, both the single axis endoskeletal knee shin systems manufactured by X and the prosthetic legs made by Y are devices that are of a type that are generally purchased by the general public at retail for individual use.

* * * * *

Example 11. * * * Accordingly, the urinary ileostomy bags are devices that are of a type that are generally purchased by the general public at retail for individual use.

* * * * *

Example 13. * * * Based on the totality of the facts and circumstances, the NMRI systems are not devices that are of a type that are generally purchased by the general public at retail for individual use.

* * * * *

■ **Par. 3.** Section 48.4216(c)–1 is amended by revising paragraph (e)(1) to read as follows:

§ 48.4216(c)–1 Computation of tax on leases and installment sales.

* * * * *

(e) * * *

(1) *General rule.* Payments made on or after January 1, 2013, pursuant to a contract for the lease, installment sale, or sale on credit of a taxable medical device that was entered into on or after March 30, 2010, are subject to tax under section 4191. The provisions of sections 4216(c) and 4217, paragraphs (a), (b), and (c) of this section, and § 48.4217–2 apply.

* * * * *

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2013–05703 Filed 3–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0044]

Drawbridge Operation Regulations; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Ninth Annual Shamrock footrace. This deviation allows the bridge to remain in

the closed-to-navigation position during the event.

DATES: This deviation is effective from 7:30 a.m. to 1:05 p.m. on March 17, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0044], is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, over Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. As required by 33 CFR 117.189(a), the draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and, from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7:30 a.m. to 1:05 p.m. on March 17, 2013, to allow the community to participate in the Ninth Annual Shamrock footrace. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised. Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened without delay.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 28, 2013.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2013–05712 Filed 3–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0038]

Drawbridge Operation Regulations; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating regulation that governs the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the First Annual ''Biggest Loser'' 5K walk and run event. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 7:30 a.m. to 9:30 a.m. on March 16, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0038], is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, over Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. As required by 33 CFR 117.189(a), the draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7:30 a.m. to 9:30 a.m. on March 16, 2013, to allow the community to participate in the First Annual ''Biggest Loser'' 5K walk and run event. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised. Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened without delay.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 25, 2013.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2013–05713 Filed 3–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0123]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Broadway Bridge across the Willamette River, mile 11.7, at Portland, OR. This deviation is necessary to accommodate the Race for the Roses and the Bridge to Brews Run

& Walk events. This deviation allows the bridge to remain in the closed position to allow for the safe movement of event participants.

DATES: This deviation is effective from 7:30 a.m. on April 7, 2013, to 8:30 a.m. on April 14, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0123] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Randall Overton, Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282, email *Randall.D.Overton@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Multnomah County has requested that the Broadway Bascule Bridge remain closed to vessel traffic to facilitate safe, uninterrupted roadway passage of participants in the Race for the Roses and the Bridge to Brews Run & Walk events. The Broadway Bridge crosses the Willamette River at mile 11.7 and provides 90 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Vessels that do not require a bridge opening may continue to transit beneath the bridge during the closure periods. Under normal conditions this bridge operates in accordance with 33 CFR 117.897, which allows for the bridge to remain closed between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. Monday through Friday, and also requires advance notification when a bridge opening is needed. This deviation period is effective from 7:30 a.m. on April 7, 2013, to 8:30 a.m. on April 14, 2013. The deviation allows the bascule span of the Broadway Bridge across the Willamette River, mile 11.7, to remain in the closed position and need not open for maritime traffic from 7:30 a.m. until 12:01 p.m. on April 7, 2013, and from 5:30 a.m. until 8:30 a.m. on April 14, 2013. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 27, 2013.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2013–05711 Filed 3–12–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0360; FRL–9380–9]

RIN 2070–ZA16

Tetrachlorvinphos; Extension of Time-Limited Interim Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends the time-limited interim tolerances for the combined residues of the insecticide tetrachlorvinphos, in or on multiple commodities which are identified in Unit III. of this document, under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 13, 2013. Objections and requests for hearings must be received on or before May 13, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0360, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; email address: *rodia.carmen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0360 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 13, 2013. Addresses for mail and hand delivery of objections and

hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0360, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background

A detailed summary of the background related to EPA's extension of the time-limited interim tolerances for the combined residues of the insecticide tetrachlorvinphos, including its metabolites, in or on multiple commodities can be found in the **Federal Register** notices of June 8, 2011 (76 FR 33184) (FRL–8874–7); September 16, 2011 (76 FR 57657) (FRL–8887–5); and March 6, 2013 (78 FR 14487) (FRL–9380–8). The referenced documents are available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2011–0360. Double-click on the documents to view the referenced background summary information. There were no substantive comments received in response to the proposed rule of March 6, 2013.

III. Conclusion

For the reasons stated in the proposed rule of March 6, 2013, EPA is finalizing its proposal to extend to August 18, 2013, the expiration dates for the following tolerances listed in 40 CFR 180.252 for tetrachlorvinphos, (Z)-2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate, including its metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol in or on: Cattle, fat (of which no more than 0.1 part per million (ppm) is tetrachlorvinphos *per se*) at 0.2 (ppm); cattle, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 1.0 ppm; cattle, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.5 ppm; cattle, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*) at 2.0 ppm; cattle, meat byproducts, except kidney and liver at 1.0 ppm; egg (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.2 ppm; hog, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*) at 0.2 ppm; hog, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 1.0 ppm; hog, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.5 ppm; hog, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*) at 2.0 ppm; hog, meat byproducts, except kidney and liver at 1.0 ppm; milk, fat (reflecting negligible residues in whole milk and of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.05 ppm; poultry, fat (of which no more than 7.0 ppm is tetrachlorvinphos *per se*) at 7.0 ppm; poultry, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 2.0 ppm; poultry, meat (of which no more than 3.0 ppm is tetrachlorvinphos *per se*) at 3.0 ppm; and poultry, meat byproducts, except liver at 2.0 ppm.

IV. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(e) of 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). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). 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.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), 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 was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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 action 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: February 26, 2013.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.252 revise the table in paragraph (a) to read as follows:

§ 180.252 Tetrachlorvinphos; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/revocation date
Cattle, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*)	0.2	8/18/13
Cattle, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	1.0	8/18/13
Cattle, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	0.5	8/18/13
Cattle, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*)	2.0	8/18/13
Cattle, meat byproducts, except kidney and liver	1.0	8/18/13
Egg (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	0.2	8/18/13
Hog, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*)	0.2	8/18/13
Hog, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	1.0	8/18/13
Hog, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	0.5	8/18/13
Hog, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*)	2.0	8/18/13
Hog, meat byproducts, except kidney and liver	1.0	8/18/13
Milk, fat (reflecting negligible residues in whole milk and of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	0.05	8/18/13
Poultry, fat (of which no more than 7.0 ppm is tetrachlorvinphos *per se*)	7.0	8/18/13
Poultry, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*)	2.0	8/18/13
Poultry, meat (of which no more than 3.0 ppm is tetrachlorvinphos *per se*)	3.0	8/18/13
Poultry, meat byproducts, except liver	2.0	8/18/13

* * * * *

[FR Doc. 2013–05814 Filed 3–12–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 424, and 476

[CMS–1588–CN4]

RIN 0938–AR12

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors in the correcting document that appeared in the October 3, 2012 **Federal Register** entitled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers; Correction.''

DATES: *Effective date:* This correcting document is effective March 12, 2013.

Applicability Date: This correcting document is applicable to discharges on or after October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In the August 31, 2012 **Federal Register** (77 FR 53258), we published a final rule entitled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers'' (hereinafter referred to as the FY 2013 IPPS/LTCH PPS final rule). To correct typographical and technical errors in the FY 2013 IPPS/LTCH PPS final rule, we published correcting documents that appeared in the October 3, 2012 **Federal Register** (77 FR 60315); October 17, 2012 **Federal Register** (77 FR 63751); and the October 29, 2012 **Federal Register** (77 FR 65495).

The October 3, 2012 correcting document (77 FR 60315) included several corrections to figures and data for the Hospital Readmissions Reduction program. Since that time, we have determined that these corrections still contained errors. Therefore, in this correcting document, we will identify and correct the errors related to the Hospital Readmissions Reduction Program included in October 3, 2012 correcting document (FR Doc. 2012–24307).

II. Summary of Errors and Corrections to Tables Posted on the CMS Web Site

A. Errors in the October 3, 2012 Correcting Document

On page 60317, in corrections to figures regarding the Hospital Readmissions Reduction Program, we made an error in the: (1) Amount by which payments to hospitals would be reduced; and (2) number of hospitals that will have their base operating DRG payments reduced by the readmissions adjustment.

B. Errors in and Corrections to Tables Posted on the CMS Web Site

In the August 31, 2012 FY 2013 IPPS/LTCH PPS final rule **Federal Register** (77 FR 53717), we list Table 15 as table that is available only through the Internet.

In Table 15.—FY 2013 Final Readmissions Adjustment Factors, we are correcting technical errors in the calculation of the readmissions adjustment factors published for the FY 2013 IPPS/LTCH PPS final rule. For the FY 2013 IPPS/LTCH PPS final rule and for the subsequent October 3, 2012 correcting document, we inadvertently failed to properly include all of Medicare inpatient claims from the FY 2008 MedPAR file and the FY 2009 MedPAR file in determining the base operating DRG payment amounts in the calculation of aggregate payments for excess readmissions and aggregate payments for all discharges that were used to calculate the readmissions adjustment factors. Under the policy we adopted in that final rule, for FY 2013, aggregate payments for excess readmissions and aggregate payments for all discharges are calculated using data from MedPAR claims with discharge dates that are on or after July 1, 2008, and no later than June 30, 2011.

The corrections to Tables 15 discussed in this section of the correction document will be posted on the CMS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp.* Click on the link on the left side of the screen titled, ''FY 2013 IPPS Final Rule Home Page'' or ''Acute Inpatient—Files for Download.''

III. Waiver of Proposed Rulemaking and Delay of Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(b) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

In our view, this correcting document does not constitute a rulemaking that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects technical errors regarding the Hospital Readmissions Reduction Program in the October 3, 2012 correcting document and Table 15 of the Addendum of the FY 2013 IPPS/LTCH PPS final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the preamble and the Addendum of the FY 2013 IPPS/LTCH PPS final rule accurately reflect the policies adopted in that rule.

In addition, even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our final rule. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2012–24307 of October 3, 2012 (77 FR 60315), make the following corrections:

1. On page 60317,

a. Top half of the page, first column, third full paragraph (section IV.A.1.b. of the correcting document), last line 3, the figure ''$290'' is corrected to read ''$280''.

b. Bottom half of the page following the table, first column, last paragraph (section IV.B.2. of the correcting document), line 29, the figure ''2,217'' is corrected to read ''2,214''.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 7, 2013.

Jennifer M. Cannistra,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2013–05724 Filed 3–12–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[Docket No. DOT–OST–2012–0159]

RIN 2105–AE20

Standard Time Zone Boundaries

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule updates and amends the Department's standard time zone boundaries regulations to reflect changes that Congress made to the Uniform Time Act. The purpose of this update is to ensure that the Department's regulations accurately reflect other Federal law and to reduce confusion over ambiguous language and inconsistencies.

DATES: This rule is effective March 13, 2013.

FOR FURTHER INFORMATION CONTACT: Jill Laptosky, Attorney-Advisor, Office of General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590. She may also be reached by telephone at 202–493–0308 or by email at *jill.laptosky@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Since 2000, Congress has made several amendments to the Uniform Time Act, 15 U.S.C. 260–267. Consequently, the Department's regulations on standard time zone boundaries, 49 CFR Part 71, need to be updated in order to ensure their consistency with Federal law. Therefore, the Department is issuing this final rule to make the necessary updates and to revise the language for clarity.

This final rule is published under the authority of 15 U.S.C. 260–267, which authorized the Secretary of Transportation to prescribe regulations related to the observance of a uniform standard of time.

The Administrative Procedure Act (5 U.S.C. 553) contains a ''good cause'' exemption, which allows agencies to dispense with notice and comment if those procedures are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with a notice of proposed rulemaking and public comment as this rule is implementing statutory changes and clarifying language without imposing any new requirements.

Amendments To Conform to Statute

Section 71.1(a) is amended to correct a drafting error in the current rule that referenced eight time zones instead of the nine that exist pursuant to 15 U.S.C. 263. The first amendment in this final rule thus changes the reference from eight to nine. Likewise, in § 71.1(c), the ninth time zone, Chamorro, is added to the list of time zones.

Section 71.2(a) is amended to change the dates on which Daylight Saving Time begins and ends pursuant to 15 U.S.C. 260a. Daylight Saving Time now begins at 2 a.m. on the second Sunday in March and ends at 2 a.m. on the first Sunday in November.

Additionally, § 71.2(a) is amended to correct the drafting error in relation to a State's authority to exempt an area within its boundaries from the observance of Daylight Saving Time. The amended version accurately states that a State that lies within two time zones may either exempt the entire area of the State or either portion of the State that lies within either time zone.

Revisions to Language for Clarity

Section 71.1(a) is amended to remove part of the last sentence, which states that ''specified rail carriers * * * [are authorized] to carry the standard of time on which the major portion of a particular operation is conducted into an adjoining time zone.'' This language will not be replaced because it is an unnecessary interpretation of the Federal statute.

Additionally, § 71.1(a) is amended to change the beginning of the sentence that reads, ''It also contains lists * * *'' It is changed to, ''The Uniform Time Act also contains lists * * *'' Likewise, the end of subsection (a) to § 71.1 has been amended to provide a citation to the Federal statute that created the list of specified rail carriers: ''15 U.S.C. 265.''

The headings of § 71.7(g) and § 71.9(d) are amended to copy the heading of § 71.5(h) to read, ''Municipalities on boundary line.'' The three subsections are fundamentally identical, and thus no reason exists to have different headings.

Section 71.6 originally had no subsections. It is now amended so that § 71.6 will have two subsections: § 71.6(a) and (b). The language of the original § 71.6 will remain and be incorporated into the new § 71.6(a). Section 71.6(b) will include the list of specified rail carriers that the Federal statute identifies for the time zones referenced in this Part. *See* 15 U.S.C. 265. Subsection (a) is now titled, ''Central zone in general.'' Subsection (b) is titled, ''Specified rail carrier exemptions.''

Regulatory Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Policies and Procedures

This final rule is not a significant regulatory action within the meaning of Executive Order 12866 or Executive Order 13563 and, therefore, has not been reviewed by the Office of Management and Budget (OMB). This final rule is not significant under DOT's Regulatory Policies and Procedures. This rulemaking makes amendments to update the Department's regulations to make them clearer and consistent with other Federal law. As a result, DOT anticipates that this rulemaking will have no economic impact.

Regulatory Flexibility Act

Since notice and comment rulemaking is not necessary for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. However, DOT has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities because it simply amends our regulations to accurately reflect other Federal law and clarify the regulations.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). It does not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any 1 year.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. The DOT has analyzed this final rule under the PRA and has determined that this rule does not contain collection of information requirements.

Executive Order 13132 (Federalism Assessment)

The final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not include sufficient federalism implications to warrant consultation processes.

Executive Order 13175 (Tribal Consultation)

This final rule was analyzed according to Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The final rule does not include sufficient tribal implications to warrant consultation processes.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347), as amended, requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on any action significantly affecting the quality of the human environment. Since this final rule does not alter current practices, it is unlikely that the adoption of this rule will have any significant impacts on the environment.

List of Subjects in 49 CFR Part 71

Time.

Issued in Washington, DC, on March 5, 2013, under authority delegated in 49 CFR Part 1.27(a).

Robert S. Rivkin,

General Counsel.

For the reasons stated in the preamble, the Office of the Secretary amends 49 CFR Part 71 as follows:

PART 71—STANDARD TIME ZONE BOUNDARIES

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 15 U.S.C. 260, 260a, 261, 262, 263, 264, 265, 267, and 49 CFR 5.35(a).

■ 2. In § 71.1, revise paragraphs (a) and (c) to read as follows:

§ 71.1 Limits defined: exceptions authorized for certain rail operating purposes only.

(a) This part prescribes the geographic limits of each of the nine standard time zones established by section 1 of the Standard Time Act, as amended by section 4 of the Uniform Time Act of 1966 (15 U.S.C. 261). The Uniform Time Act also contains lists of operating exceptions granted for specified rail carriers, whose operations cross the time zone boundaries prescribed by this part. (15 U.S.C. 265).

* * * * *

(c) The time zones established by the Standard Time Zone Act, as amended by the Uniform Time Act of 1966, are Atlantic, eastern, central, mountain,

Pacific, Alaska, Hawaii-Aleutian, Samoa, and Chamorro.

■ 3. In § 71.2, revise paragraph (a) to read as follows:

§ 71.2 Annual advancement of standard time.

(a) The Uniform Time Act of 1966 (15 U.S.C. 260a(a)), as amended, requires that the standard time of each State observing Daylight Saving Time shall be advanced 1 hour beginning at 2 a.m. on the second Sunday in March of each year and ending at 2 a.m. on the first Sunday in November. This advanced time shall be the standard time of each zone during such period. The Act authorizes any State to exempt itself from this requirement. States in two or more time zones may exempt either the entire State or may exempt the entire area of the State lying within either time zone.

* * * * *

■ 4. Revise § 71.6 to read as follows:

§ 71.6 Central zone.

(a) *Central zone in general.* The third zone, the central standard time zone, includes that part of the United States that is west of the boundary line between the eastern and central standard time zones described in § 71.5 and east of the boundary line between the central and mountain standard time zones described in § 71.7.

(b) *Specified rail carrier exemptions.* The boundary line described in § 71.7 will not apply to the list of rail carriers in this subsection. These carriers will have the following changing points between the central and mountain time zones. The Chicago, Rock Island and Gulf Railway Company and the Chicago, Rock Island and Pacific Railway Company may use Tucumcari, New Mexico, as the point at which they change from central to mountain time and vice versa; the Colorado Southern and Fort Worth and Denver City Railway Companies may use Sixela, New Mexico, as such changing point; the Atchison, Topeka and Santa Fe Railway Company and other branches of the Santa Fe system may use Clovis, New Mexico, as such changing point, and those railways running into or through El Paso, Texas, may use El Paso as such point.

■ 6. In § 71.7, revise the paragraph (g) subject heading to read as follows:

§ 71.7 Boundary line between central and mountain zones.

* * * * *

(g) *Municipalities on boundary line.*

* * *

■ 7. In § 71.9, revise the paragraph (d) subject heading to read as follows:

§ 71.9 Boundary line between mountain and Pacific zones.

* * * * *

(d) *Municipalities on boundary line.*

* * *

[FR Doc. 2013–05736 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 121107617–3181–02]

RIN 0648–XC351

Western Pacific Fisheries; 2013 Annual Catch Limits and Accountability Measures

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

ACTION: Final specifications.

SUMMARY: In this rule, NMFS specifies annual catch limits for western Pacific bottomfish, crustacean, precious coral, and coral reef ecosystem fisheries, and accountability measures to correct or mitigate any overages of catch limits. The catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: The final specifications are effective April 12, 2013 through December 31, 2013.

ADDRESSES: Copies of the fishery ecosystem plans are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org.* Copies of the environmental assessments and findings of no significant impact for this action, identified by NOAA–NMFS–2012–0226, are available from *www.regulations.gov,* or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: NMFS is specifying the 2013 annual catch limits (ACLs) and accountability measures (AM) for bottomfish, crustacean, precious coral, and coral reef ecosystem fishery management unit species (MUS) in the U.S. Exclusive Economic Zone (EEZ, generally 3–200 nm from shore) around American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and Hawaii. The 2013 fishing year begins on January 1 and ends on December 31, except for precious coral fisheries, for which the fishing year began on July 1, 2012, and ends on June 30, 2013.

NMFS is not specifying ACLs for bottomfish, crustacean, precious coral, or coral reef ecosystem MUS identified in the Fishery Ecosystem Plan (FEP) for the U.S. Pacific Remote Island Areas (PRIA), because commercial fishing is prohibited in the Pacific Remote Islands Marine National Monument, typically within about 50 nm of shore (Presidential Proclamation 8336, January 12, 2009, 74 FR 1565). Moreover, there is no suitable habitat for these fisheries, except at Kingman Reef, where fishing for these resources does not presently occur. NMFS is currently reviewing a proposed amendment to the PRIA FEP, which proposes to permit non-commercial fishing 12 nm seaward of emergent features in the Pacific Remote Islands Monument, and ensure such fishing, if allowed, is managed as a sustainable activity (see the proposed rule, February 21, 2013, 78 FR 12015).

Additionally, NMFS is not specifying ACLs for MUS that are currently subject to Federal fishing moratoria or prohibitions. These MUS include all species of gold coral, all species of deepwater precious corals at the Westpac Bed Refugium, and the three Hawaii seamount groundfish: pelagic armorhead, alfonsin, and raftfish. The current prohibitions on fishing for these MUS serve as a functional equivalent of an ACL of zero. Finally, NMFS is also not specifying ACLs for pelagic MUS at this time, because it previously determined that pelagic species are subject to international fishery agreements or have a life cycle of approximately one year and, therefore, have statutory exceptions to the ACL requirements.

TABLE 1—AMERICAN SAMOA

Fishery	Management unit species	Proposed ACL specification
Bottomfish	Bottomfish multi-species stock complex	101,000 lb (45,813 kg).
Crustacean	Deepwater Shrimp	80,000 lb (36,287 kg).
	Spiny Lobster	2,300 lb (1,043 kg).
	Slipper Lobster	30 lb (14 kg).
	Kona Crab	3,200 lb (1,451 kg).
Precious Coral	Black Coral	790 lb (358 kg).
	Precious Corals in the American Samoa Exploratory Area.	2,205 lb (1,000 kg).
Coral Reef Ecosystem	Acanthuridae—surgeonfish	19,516 lb (8,852 kg).
	Lutjanidae—snappers	18,839 lb (8,545 kg).
	Selar crumenophthalmus—atule or bigeye scad.	8,396 lb (3,808 kg).
	Mollusks—turbo snail; octopus; giant clams	16,694 lb (7,572 kg).
	Carangidae—jacks	9,490 lb (4,305 kg).
	Lethrinidae—emperors	7,350 lb (3,334 kg).
	Scaridae—parrotfish	8,145 lb (3,695 kg).
	Serranidae—groupers	5,600 lb (2,540 kg).
	Holocentridae—squirrelfish	2,585 lb (1,173 kg).
	Mugilidae—mullets	2,857 lb (1,296 kg).
	Crustaceans—crabs	2,248 lb (1,020 kg).
	Bolbometopon muricatum—bumphead parrotfish.	235 lb (107 kg).
	Cheilinus undulatus—Humphead (Napoleon) wrasse.	1,743 lb (791 kg).
	Carcharhinidae—Reef Sharks	1,309 lb (594 kg).
	All Other CREMUS combined	18,910 lb (8,577 kg).

TABLE 2—MARIANA ARCHIPELAGO—GUAM

Fishery	Management unit species	Proposed ACL specification
Bottomfish	Bottomfish multi-species stock complex	66,800 lb (30,300 kg).
Crustaceans	Deepwater Shrimp	48,488 lb (21,994 kg).
	Spiny Lobster	2,700 lb (1,225 kg).
	Slipper Lobster	20 lb (9 kg).
	Kona Crab	1,900 lb (862 kg).
Precious Coral	Black Coral	700 lb (318 kg).
	Precious Corals in the Guam Exploratory Area.	2,205 lb (1,000 kg).
Cora Reef Ecosystem	Acanthuridae—surgeonfish	70,702 lb (32,070 kg).
	Carangidae—jacks	45,377 lb (20,583 kg).
	Selar crumenophthalmus—atulai or bigeye scad.	56,514 lb (25,634 kg).
	Lethrinidae—emperors	38,720 lb (17,563 kg).
	Scaridae—parrotfish	28,649 lb (12,995 kg).
	Mullidae—goatfish	25,367 lb (11,506 kg).
	Mollusks—turbo snail; octopus; giant clams	21,941 lb (9,952 kg).
	Siganidae—rabbitfish	26,120 lb (11,848 kg).
	Lutjanidae—snappers	17,726 lb (8,040 kg).
	Serranidae—groupers	17,958 lb (8,146 kg).
	Mugilidae—mullets	15,032 lb (6,818 kg).
	Kyphosidae—chubs/rudderfish	13,247 lb (6,009 kg).
	Crustaceans—crabs	5,523 lb (2,505 kg).
	Holocentridae—squirrelfish	8,300 lb (3,765 kg).
	Algae	5,329 lb (2,417 kg).
	Labridae—wrasses	5,195 lb (2,356 kg).
	Bolbometopon muricatum—bumphead parrotfish.	797 lb (362 kg) (CNMI and Guam combined).
	Cheilinus undulatus—Humphead (Napoleon) wrasse.	1,960 lb (889 kg).
	Carcharhinidae—Reef Sharks	6,942 lb (3,149 kg).
	All Other CREMUS combined	83,214 lb (37,745 kg).

TABLE 3—MARIANA ARCHIPELAGO—CNMI

Fishery	Management unit species	Proposed ACL specification
Bottomfish	Bottomfish multi-species stock complex	228,000 lb (103,419 kg).
Crustacean	Deepwater Shrimp	275,570 lb (124,996 kg).
	Spiny Lobster	5,500 lb (2,495 kg).

TABLE 3—MARIANA ARCHIPELAGO—CNMI—Continued

Fishery	Management unit species	Proposed ACL specification
	Slipper Lobster	60 lb (27 kg).
	Kona Crab	6,300 lb (2,858 kg).
Precious Coral	Black Coral	2,100 lb (953 kg).
	Precious Corals in the CNMI Exploratory Area	2,205 lb (1,000 kg).
Coral Reef Ecosystem	Lethrinidae—emperors	27,466 lb (12,458 kg).
	Carangidae—jacks	21,512 lb (9,758 kg).
	Acanthuridae—surgeonfish	6,884 lb (3,123 kg).
	Selar crumenophthalmus—atulai or bigeye scad.	7,459 lb (3,383 kg).
	Serranidae—groupers	5,519 lb (2,503 kg).
	Lutjanidae—snappers	3,905 lb (1,771 kg).
	Mullidae—goatfish	3,670 lb (1,665 kg).
	Scaridae—parrotfish	3,784 lb (1,716 kg).
	Mollusks—turbo snail; octopus; giant clams	4,446 lb (2,017 kg).
	Mugilidae—mullets	3,308 lb (1,500 kg).
	Siganidae—rabbitfish	2,537 lb (1,151 kg).
	Bolbometopon muricatum—bumphead parrotfish.	797 lb (362 kg) (CNMI and Guam combined).
	Cheilinus undulatus—Humphead (Napoleon) wrasse.	2,009 lb (911 kg).
	Carcharhinidae—Reef Sharks	5,600 lb (2,540 kg).
	All Other CREMUS combined	9,820 lb (4,454 kg).

TABLE 4—HAWAII

Fishery	Management unit species	Proposed ACL specification
Bottomfish	Non-Deep 7 Bottomfish	145,000 (65,771 kg).
Crustacean	Deepwater Shrimp	250,773 lb (113,749 kg).
	Spiny Lobster	10,000 lb (4,536 kg).
	Slipper Lobster	280 lb (127 kg).
	Kona Crab	27,600 lb (12,519 kg).
Precious Coral	Auau Channel Black Coral	5,512 lb (2,500 kg).
	Makapuu Bed—Pink Coral	2,205 lb (1,000 kg).
	Makapuu Bed—Bamboo Coral	551 lb (250 kg).
	180 Fathom Bank—Pink Coral	489 lb (222 kg).
	180 Fathom Bank—Bamboo Coral	123 lb (56 kg).
	Brooks Bank—Pink Coral	979 lb (444 kg).
	Brooks Bank—Bamboo Coral	245 lb (111 kg).
	Kaena Point Bed—Pink Coral	148 lb (67 kg).
	Kaena Point Bed—Bamboo Coral	37 lb (17 kg).
	Keahole Bed—Pink Coral	148 lb (67 kg).
	Keahole Bed—Bamboo Coral	37 lb (17 kg).
	Precious Corals in the Hawaii Exploratory Area.	2,205 lb (1,000 kg).
Coral Reef Ecosystem	*Selar crumenophthalmus*—akule or bigeye scad.	651,292 lb (295,421 kg).
	Decapterus macarellus—opelu or mackerel scad.	393,563 lb (178,517 kg).
	Carangidae—jacks	193,423 lb (87,735 kg).
	Mullidae—goatfish	125,813 lb (57,068 kg).
	Acanthuridae—surgeonfish	80,545 lb (36,535 kg).
	Lutjanidae—snappers	65,102 lb (29,530 kg).
	Holocentridae—squirrelfish	44,122 lb (20,013 kg).
	Mugilidae—mullets	41,112 lb (18,648 kg).
	Mollusks—turbo snails; octopus	28,765 lb (13,048 kg).
	Scaridae—parrotfish	33,326 lb (15,116 kg).
	Crustaceans—crabs	20,686 lb (9,383 kg).
	Carcharhinidae—Reef Sharks	111,566 lb (50,605 kg).
	All Other CREMUS combined	142,282 lb (64,538 kg).

Accountability Measures

NMFS and the Council, relying on information from local resource management agencies in American Samoa, Guam, the CNMI, and Hawaii, will conduct a post-season accounting of the annual catch for each stock and stock complex immediately after the end of the fishing year. If an ACL is exceeded, the Council will take action in accordance with 50 CFR 600.310(g), which may include a recommendation that NMFS reduce the ACL for the subsequent fishing year by the amount of the overage, or other measure, as appropriate.

Additional background information on this action is found in the preamble to the proposed specifications, and is not repeated here.

Comments and Responses

On January 31, 2013, NMFS published a request for public comments (78 FR 6798) on proposed specifications that are finalized here. The public comment period ended on February 15, 2013. NMFS received two comments, and responds, as follows:

Comment 1: Affirming support for the proposed specifications as a tool to prevent overfishing of a renewable resource and ensure a better future for prosperity.

Response: NMFS agrees that these final specifications are essential to help prevent overfishing, and ensure sustainable, long-term catches for fishermen.

Comment 2: Fishermen should be able to catch as much fish as they can because a free market would establish better acceptable catch levels than a government agency.

Response: Federal law requires NMFS and the Council to manage fisheries using annual catch limits to ensure sustainable fisheries. NMFS and the Council developed the annual catch limit specifications using the best available scientific and commercial information, and in consideration of scientific uncertainty and social and economic factors. The final specifications result from the mechanism established in the Council's fishery ecosystem plans, consistent with the National Standard 1 requirements found at 50 CFR 600.310.

Changes From the Proposed Specifications

There are no changes in the final specifications.

Classification

The Regional Administrator, NMFS PIR, determined that this action is necessary for the conservation and management of Pacific Island fishery resources, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed specification stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed specifications and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was prepared.

This action is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 8, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–05785 Filed 3–12–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 49
Wednesday, March 13, 2013

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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2012–0073]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—DHS/CBP–018—Customs—Trade Partnership Against Terrorism (C–TPAT) System, System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the ''Department of Homeland Security/U.S. Customs and Border Protection, DHS/CBP–018—Customs—Trade Partnership Against Terrorism (C–TPAT) System of Records'' and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before April 12, 2013.

ADDRESSES: You may submit comments, identified by docket number DHS–2012–0073, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–325–0280), CBP Privacy Officer, U.S. Customs and Border Protection, 90 K Street NE., Washington, DC 20229. For privacy issues please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) is giving concurrent notice of a newly established system of records for the DHS/CBP–018–C–TPAT System of Records and this proposed rulemaking.

CBP is publishing a new system of records notice to notify the public about the system and offer a description of how CBP collects and maintains information pertaining to prospective, ineligible, current, or former trade partners in C–TPAT; other entities and individuals in their supply chains; and members of foreign governments' secure supply chain programs that have been recognized by CBP, through a mutual recognition arrangement or comparable arrangement, as being compatible with C–TPAT.

CBP will use the information collected and maintained through the C–TPAT program to carry out its trade facilitation, law enforcement, and national security missions. In direct response to 9/11, CBP challenged the trade community to partner with the government to design a new approach to supply chain security—one that protects the United States from acts of terrorism by improving security while facilitating the flow of compliant cargo and conveyances. The result was the Customs-Trade Partnership Against Terrorism (C–TPAT)—an innovative, voluntary government/private sector partnership program. C–TPAT is a voluntary program in which certain types of businesses agree to cooperate with CBP in the analysis, measurement, monitoring, reporting, and enhancement of their supply chains.

Businesses accepted in to C–TPAT are called partners and agree to take actions to protect their supply chain, identify security gaps, and implement specific security measures and best practices in return for facilitated processing of their shipments by CBP. The program focuses on improving security from the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination. The current security guidelines for C–TPAT program members address a broad range of topics including personnel, physical, and procedural security; access controls; education, training and awareness; manifest procedures; conveyance security; threat awareness; and documentation processing. These guidelines offer a customized solution for the members, while providing a clear minimum standard that approved companies must meet.

Businesses eligible to fully participate in C–TPAT include U.S. importers; U.S./Canada highway carriers; U.S./Mexico highway carriers; rail and sea carriers; licensed U.S. Customs brokers; U.S. marine port authority/terminal operators; U.S. freight consolidators; ocean transportation intermediaries and non-operating common carriers; Mexican and Canadian manufacturers; and Mexican long-haul carriers. As part of its development, CBP plans to include exporters from the United States in C–TPAT.

There are three tiers of C–TPAT partnership, with each tier having its own set of requirements and corresponding facilitated processing. In general, businesses are considered applicants until CBP has vetted the information in the application and accepted the business into the program. Once accepted, the business is designated as a Tier One certified partner, and a site visit is arranged. The site visit is used to validate the partner's supply chain security and leads to importers becoming Tier Two validated partners (other business types become certified, validated non-importers). If an importer with Tier Two validated partner status exemplifies best practices in its supply chain security, it may attain Tier Three validated partner status. As a business progresses up the tiers, it receives more facilitated processing at ports of entry.

Information is collected directly from C–TPAT partners or applicant businesses seeking membership in C–TPAT and indirectly from trade partners or through Mutual Recognition Arrangements (MRA) or memoranda of understanding relating to harmonization efforts between CBP and the foreign secured supply chain program. In the course of enrolling, certifying, and validating C–TPAT trade partners and their supply chains, the C–TPAT system will receive personally identifiable information (PII) and confidential business information from trade entities and their representatives.

To participate in the C–TPAT program, a company is required to submit a confidential, on-line application using the C–TPAT Security Link Portal, *https://ctpat.cbp.dhs.gov.* The C–TPAT Security Link Portal is the public-facing portion of the C–TPAT system used by applicants to submit the information in their company and supply chain security profiles. Initially, the applicant business provides basic business-identifying information in the company profile using the online application form. This business-identifying information is used to verify the identity and actual existence of the applicant business and may include basic identifying elements and/or PII used in the importation of cargo, such as U.S. Social Security Numbers (SSN) for sole proprietors, Internal Revenue Service Business Identification Numbers, and Customs assigned identification numbers (such as Manufacturer Identification numbers and Broker/Filer codes, etc.). Point of contact information is collected for the business, as well as owner information.

Additionally, the applicant business must complete a Supply Chain Security Profile (SCSP). The information provided in the SCSP is a narrative description of the procedures the applicant business uses to adhere to each C–TPAT Security Criteria or Guideline articulated for their particular business type (importer, customs broker, freight forwarder, air, sea, and land carriers, contract logistics providers, etc.) together with any supporting documentation. Data elements entered by the applicant business are accessible for update or revision through the C–TPAT Security Link Portal. An applicant's SCSP must provide supply chain security procedures for each business in the applicant's supply chain, even if those businesses are not, or do not desire to become partners of C–TPAT separately. This information is focused on the security procedures of those businesses (e.g., whether the business conducts background investigations on employees), rather than the individuals related to those businesses (e.g., a list of employee names).

A CBP Supply Chain Security Specialist (SCSS) vets the SCSP information provided by the applicant by querying that information through various information sources and systems, and queries of publicly available data (e.g., through Google). The SCSS will then evaluate the SCSP information against the results provided by such system vetting, derogatory or otherwise, and indicate whether the applicant is fit for the program in the Security Link Portal. Derogatory vetting results are incorporated into an issue paper for a C–TPAT supervisor's approval, and the issue paper is stored separately from the Security Link Portal on an internal C–TPAT SharePoint, which is only accessible by appropriate CBP employees and supervisors.

Vetting results containing personally identifiable information (PII) are not stored in the C–TPAT Security Link Portal. When a query reveals derogatory information about a business applicant or partner, the SCSS makes a notation on the internal portion of the C–TPAT Security Link Portal indicating the existence of derogatory information and a citation to the appropriate records. For instance, if a query of an applicant in TECS results in derogatory information, the TECS ID is used as an identifier for the record in the C–TPAT Security Link Portal, rather than the contents of the TECS record. However, specific details regarding the incident or violation giving rise to the unfavorable analysis will be maintained within the C–TPAT SharePoint site and the relevant source system. The SCSS is responsible for vetting all C–TPAT applicants, and conducts this vetting of business entities every 6–12 months to ensure continued compliance.

DHS is issuing this Notice of Proposed Rulemaking to exempt portions of the system of records from certain provisions of the Privacy Act.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for portions of DHS/CBP–018–Customs—Trade Partnership Against Terrorism (C–TPAT) System of Records. Information in DHS/CBP–018–Customs—Trade Partnership Against Terrorism (C–TPAT) System of Records relates to official DHS national security, law enforcement, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; and to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/CBP–018–Customs—Trade Partnership Against Terrorism (C–TPAT) System of Records is also published in this issue of the **Federal Register.**

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 is revised to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 et seq.); 5 U.S.C. 301. Subpart

A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add new paragraph 70 at the end of Appendix C to part 5 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

70. The DHS/CBP–018–Customs—Trade Partnership Against Terrorism (C–TPAT) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP–018–Customs—Trade Partnership Against Terrorism (C–TPAT) System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security activities. The DHS/CBP–018–Customs—Trade Partnership Against Terrorism (C–TPAT) System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. CBP will not assert any exemption with respect to information requested from and provided by the C–TPAT applicant including, but not limited to, company profile, supply chain information and other information provided during the application and validation process. CBP will not assert any exemptions for an individual's application data and final membership determination in response to a request from that individual. However, the Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that a law enforcement agency has sought particular records may affect ongoing law enforcement activities. As such, pursuant to 5 U.S.C. 552a(j)(2), the Secretary of Homeland Security has exempted this system from sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from section (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information. Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, all other C–TPAT data, including information regarding the possible ineligibility of an applicant for C–TPAT membership discovered during the vetting process and any resulting issue papers, are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), information regarding the possible ineligibility of an applicant for C–TPAT membership discovered during the vetting process and any resulting issue papers are exempt 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H),(e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: February 22, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–05673 Filed 3–12–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–NOA–0013]

Energy Conservation Program: Data Collection and Comparison With Forecasted Unit Sales of Five Lamp Types

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability.

SUMMARY: The U.S. Department of Energy (DOE) is informing the public of its collection of shipment data and creation of spreadsheet models to provide comparisons between actual and benchmark estimate unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps), which are currently exempt from energy conservation standards. As the actual sales do not exceed the forecasted estimate by 100 percent for any lamp type (*i.e.,* the threshold triggering a rulemaking for an energy conservation

standard for that lamp type has not been exceeded), DOE has determined that no regulatory action is necessary at this time. However, DOE will continue to track sales data for these exempted lamps. Relating to this activity, DOE has prepared, and is making available on its Web site, a spreadsheet showing the comparisons of anticipated versus actual sales, as well as the model used to generate the original sales estimates.

ADDRESSES: The spreadsheet is available online: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/63.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *five_lamp_types@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

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I. Background

The Energy Independence and Security Act of 2007 (EISA 2007; Pub. L. 110–140) was enacted on December 19, 2007. Among the requirements of subtitle B (Lighting Energy Efficiency) of title III of EISA 2007 were provisions directing DOE to collect, analyze, and monitor unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps). In relevant part, section 321(a)(3)(B) of EISA 2007 amended section 325(l) of the Energy Policy and Conservation Act of 1975 (EPCA) by adding paragraph (4)(B), which generally directs DOE, in consultation with the National Electrical Manufacturers Association (NEMA), to: (1) Collect unit sales data for each of the five lamp types for calendar years 1990 through 2006 in order to determine the historical growth rate for each lamp type; and (2) construct a model for each of the five lamp types based on coincident economic indicators that closely match the historical annual growth rates of each lamp type to provide a neutral comparison benchmark estimate of future unit sales. (42 U.S.C. 6295(l)(4)(B)) Section 321(a)(3)(B) of EISA 2007 also amends section 325(l) of EPCA by adding paragraph (4)(C), which, in relevant part, directs DOE to collect unit sales data for calendar years 2010 through 2025, in consultation with NEMA, for each of the five lamp types. DOE must then compare the actual lamp sales in that year with the benchmark estimate, determine if the unit sales projection has been exceeded, and issue the findings within 90 days after the end of the analyzed calendar year. (42 U.S.C. 6295(l)(4)(C))

On December 18, 2008, DOE issued a notice of data availability (NODA) for the *Report on Data Collection and Estimated Future Unit Sales of Five Lamp Types* (hereafter the ''2008 analysis''), which was published in the **Federal Register** on December 24, 2008. 73 FR 79072. The 2008 analysis presented the 1990 through 2006 shipment data collected in consultation with NEMA, the spreadsheet model DOE constructed for each lamp type, and the benchmark unit sales estimates for 2010 through 2025. On April 4, 2011, DOE published a NODA in the **Federal Register** (hereafter the ''2010 comparison'') announcing the availability of updated spreadsheet models presenting the benchmark estimates from the 2008 analysis and the collected sales data from 2010 for the first annual comparison. 76 FR 18425. Similarly, DOE published another NODA in the **Federal Register** on March 20, 2012 (hereafter the ''2011 comparison'') announcing the updated spreadsheet models and 2011 sales data related to the second annual comparison. 77 FR 16183. Today's NODA presents the third annual comparison; specifically, section IV of this report compares the actual unit sales against benchmark unit sales estimates for 2012.[1]

EISA 2007 also amends section 325(l) of EPCA by adding paragraphs (4)(D) through (4)(H) which state that if DOE finds that the unit sales for a given lamp type in any year between 2010 and 2025 exceed the benchmark estimate of unit sales by at least 100 percent (*i.e.,* more than double the anticipated sales), then DOE must take regulatory action to establish an energy conservation standard for such lamps. (42 U.S.C. 6295(l)(4)(D)–(H)) For 2,601–3,300 lumen general service incandescent lamps, DOE must adopt a statutorily-prescribed energy conservation standard, and for the other four types of lamps, the statute requires DOE to initiate an accelerated rulemaking to establish energy conservation standards. If the Secretary does not complete the accelerated rulemakings within one year of the end of the previous calendar year, there is a ''backstop requirement'' for each lamp type, which would establish energy conservation standard levels and related requirements by statute. *Id.*

As in the 2008 analysis and previous comparisons, DOE uses manufacturer shipments as a surrogate for unit sales in this NODA because manufacturer shipment data are tracked and aggregated by the trade organization, NEMA. DOE believes that annual shipments track closely with actual unit sales of these five lamp types, as DOE presumes that retailer inventories remain constant from year to year. DOE believes this is a reasonable assumption because the markets for these five lamp types have existed for many years, thereby enabling manufacturers and retailers to establish appropriate inventory levels that reflect market demand. Furthermore, in the long-run, unit sales could not increase in any one year without manufacturer shipments increasing either that year or the following one. In either case, increasing unit sales must eventually result in increasing manufacturer shipments. This is the same methodology presented in DOE's 2008 analysis, 2010 comparison, and 2011 comparison, and the Department did not receive any comments challenging this assumption or the general approach.

II. Definitions

A. Rough Service Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''rough service lamp.'' The statutory definition reads as follows: ''The term 'rough service lamp' means a lamp that—(i) has a minimum of 5 supports with filament configurations that are C–7A, C–11, C–17, and C–22 as listed in Figure 6–12 of

[1] The notices and related documents for the 2008 analysis, 2010 comparison, 2011 comparison, and this NODA are available through the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/63.*

the 9th edition of the IESNA [Illuminating Engineering Society of North America] Lighting handbook, or similar configurations where lead wires are not counted as supports; and (ii) is designated and marketed specifically for 'rough service' applications, with—(I) the designation appearing on the lamp packaging; and (II) marketing materials that identify the lamp as being for rough service.'' (42 U.S.C. 6291(30)(X))

As noted above, rough service incandescent lamps must have a minimum of five filament support wires (not counting the two connecting leads at the beginning and end of the filament), and must be designated and marketed for ''rough service'' applications. This type of incandescent lamp is typically used in applications where the lamp would be subject to mechanical shock or vibration while it is operating. Standard incandescent lamps have only two support wires (which also serve as conductors), one at each end of the filament coil. When operating (*i.e.,* when the tungsten filament is glowing so hot that it emits light), a standard incandescent lamp's filament is brittle, and rough service applications could cause it to break prematurely. To address this problem, lamp manufacturers developed lamp designs that incorporate additional support wires along the length of the filament to ensure that it has support not just at each end, but at several other points as well. The additional support protects the filament during operation and enables longer operating life for incandescent lamps in rough service applications. Typical applications for these rough service lamps might include commercial hallways and stairwells, gyms, storage areas, and security areas.

B. Vibration Service Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''vibration service lamp.'' The statutory definition reads as follows: ''The term 'vibration service lamp' means a lamp that—(i) has filament configurations that are C–5, C–7A, or C–9, as listed in Figure 6–12 of the 9th Edition of the IESNA Lighting Handbook or similar configurations; (ii) has a maximum wattage of 60 watts; (iii) is sold at retail in packages of 2 lamps or less; and (iv) is designated and marketed specifically for vibration service or vibration-resistant applications, with—(I) the designation appearing on the lamp packaging; and (II) marketing materials that identify the lamp as being vibration service only.'' (42 U.S.C. 6291(30)(AA))

The statute mentions three examples of filament configurations for vibration service lamps in Figure 6–12 of the *IESNA Lighting Handbook,* one of which (*i.e.,* C–7A) is also listed in the statutory definition of ''rough service lamp.'' The definition of ''vibration service lamp'' requires that such lamps have a maximum wattage of 60 watts and be sold at a retail level in packages of two lamps or fewer. Similar to rough service lamps, vibration service lamps must be designated and marketed for vibration service or vibration-resistant applications. As the name suggests, this type of incandescent lamp is generally used in applications where the incandescent lamp would be subject to a continuous low level of vibration, such as in a ceiling fan light kit. In such applications, standard incandescent lamps without additional filament support wires may not achieve the full rated life, because the filament wire is brittle and would be subject to breakage at typical operating temperature. To address this problem, lamp manufacturers typically use a more malleable tungsten filament to avoid damage and short circuits between coils.

C. Three-Way Incandescent Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''3-way incandescent lamp.'' The statutory definition reads as follows: ''The term '3-way incandescent lamp' includes an incandescent lamp that—(i) employs 2 filaments, operated separately and in combination, to provide 3 light levels; and (ii) is designated on the lamp packaging and marketing materials as being a 3-way incandescent lamp.'' (42 U.S.C. 6291(30)(Y))

Three-way lamps are commonly found in wattage combinations such as 50, 100, and 150 watts or 30, 70, and 100 watts. These lamps use two filaments (*e.g.,* a 30-watt and a 70-watt filament) and can be operated separately or together to produce three different lumen outputs (*e.g.,* 305 lumens with one filament, 995 lumens with the other, or 1,300 lumens using the filaments together). When used in three-way sockets, these lamps allow users to control the light level. Three-way incandescent lamps are typically used in residential multi-purpose areas, where consumers may adjust the light level to be appropriate for the task they are performing.

D. 2,601–3,300 Lumen General Service Incandescent Lamps

The statute does not provide a definition of ''2,601–3,300 Lumen General Service Incandescent Lamps''; however, DOE is interpreting this term to be a general service incandescent lamp [2] that emits light between 2,601 and 3,300 lumens. Lamps on the market that emit light within this lumen range are immediately recognizable because, as required by the Energy Policy Act of 1992, Public Law 102–486, all general service incandescent lamps must be labeled with lamp lumen output.[3] These lamps are used in general service applications when high light output is needed.

E. Shatter-Resistant Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''shatter-resistant lamp, shatter-proof lamp, or shatter-protected lamp.'' The statutory definition reads as follows: ''The terms 'shatter-resistant lamp,' 'shatter-proof lamp,' and 'shatter-protected lamp' mean a lamp that—(i) has a coating or equivalent technology that is compliant with [National Sanitation Foundation/American National Standards Institute] NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken; and (ii) is designated and marketed for the intended application, with—(I) the designation on the lamp packaging; and (II) marketing materials that identify the lamp as being shatter-resistant, shatter-proof, or shatter-protected.'' (42 U.S.C. 6291(30)(Z)) Although the definition provides three names commonly used to refer to these lamps, DOE simply refers to them collectively as ''shatter-resistant lamps.''

Shatter-resistant lamps incorporate a special coating designed to prevent glass shards from being dispersed if a lamp's glass envelope breaks. Shatter-resistant lamps incorporate a coating compliant with industry standard NSF/ANSI 51,[4] ''Food Equipment Materials,'' and are labeled and marketed as shatter-resistant, shatter-proof, or shatter-protected. Some types of the coatings can also protect the lamp from breakage in applications subject to heat and

[2] ''General service incandescent lamp'' is defined as a standard incandescent or halogen type lamp that—(I) Is intended for general service applications; (II) has a medium screw base; (III) has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and (IV) is capable of being operated at a voltage range at least partially within 110 and 130 volts. (42 U.S.C. 6291(30)(D)).

[3] The Federal Trade Commission issued the lamp labeling requirements in 1994 (*see* 59 FR 25176 (May 13, 1994)). Further amendments were made to the lamp labeling requirements in 2007 (*see* 16 CFR 305.15(b); 72 FR 49948, 49971–72 (August 29, 2007)). The package must display the lamp's light output (in lumens), energy use (in watts), and lamp life (in hours).

[4] NSF/ANSI 51 applies specifically to materials and coatings used in the manufacturing of equipment and objects destined for contact with foodstuffs.

thermal shock that may occur from water, sleet, snow, soldering, or welding.

III. Comparison Methodology

In the 2008 analysis, DOE reviewed each of the five sets of shipment data that were collected in consultation with NEMA and applied two curve fits to generate unit sales estimates for the five lamp types after calendar year 2006. One curve fit applied a linear regression to the historical data and extended that line into the future. The other curve fit applied an exponential growth function to the shipment data and projected unit sales into the future. For this calculation, linear regression treats the year as a dependent variable and shipments as the independent variable. The linear regression curve fit is modeled by minimizing the differences among the data points and the best curve-fit linear line using the least squares function.[5] The exponential curve fit is also a regression function and uses the same least squares function to find the best fit. For some data sets, an exponential curve provides a better characterization of the historical data, and, therefore, a better projection of the future data.

For 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, DOE found that the linear regression and exponential growth curve fits produced nearly the same estimates of unit sales (*i.e.,* the difference between the two forecasted values was less than 1 or 2 percent). However, for rough service and vibration service lamps, the linear regression curve fit projected lamp unit sales would decline to zero for both lamp types by 2018. In contrast, the exponential growth curve fit projected a more gradual decline in unit sales, such that lamps would still be sold beyond 2018, and it was, therefore, considered the more realistic forecast. While DOE was satisfied that either the linear regression or exponential growth spreadsheet model generated a reasonable benchmark unit sales estimate for 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, DOE selected the exponential growth curve fit for these lamp types for consistency with the selection made for rough service and vibration service lamps.[6] DOE examines the benchmark unit sales estimates and actual sales for each of the five lamp types in the following section and also makes the comparisons available in a spreadsheet online: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/63.*

IV. Comparison Results

A. Rough Service Lamps

For rough service lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2012 to be 5,780,000 units. The NEMA-provided shipment data reported shipments of 6,045,000 rough service lamps in 2012. As this finding exceeds the estimate by only 4.6 percent, DOE will continue to track rough service lamp sales data and will not initiate regulatory action for this lamp type at this time.

B. Vibration Service Lamps

For vibration service lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2012 to be 3,019,000 units. The NEMA-provided shipment data reported shipments of 1,077,000 vibration service lamps in 2012. As this finding is only 35.7 percent of the estimate, DOE will continue to track vibration service lamp sales data and will not initiate regulatory action for this lamp type at this time.

C. Three-Way Incandescent Lamps

For 3-way incandescent lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2012 to be 50,131,000 units. The NEMA-provided shipment data reported shipments of 28,854,000 3-way incandescent lamps in 2012. As this finding is only 57.6 percent of the estimate, DOE will continue to track 3-way incandescent lamp sales data and will not initiate regulatory action for this lamp type at this time.

D. 2,601–3,300 Lumen General Service Incandescent Lamps

For 2,601–3,300 lumen general service incandescent lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2012 to be 33,979,000 units. The NEMA-provided shipment data reported shipments of 12,373,000 2,601–3,300 lumen general service incandescent lamps in 2012. As this finding is 36.4 percent of the estimate, DOE will continue to track 2,601–3,300 lumen general service incandescent lamp sales data and will not initiate regulatory action for this lamp type at this time.

E. Shatter-Resistant Lamps

For shatter-resistant lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2012 to be 1,663,000 units. The NEMA-provided shipment data reported shipments of 1,455,000 shatter-resistant lamps in 2012. As this finding is only 87.5 percent of the estimate, DOE will continue to track shatter-resistant lamp sales data and will not initiate regulatory action for this lamp type at this time.

V. Conclusion

None of the shipments for rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, or shatter-resistant lamps crossed the statutory threshold for a standard. DOE will monitor the situation for these five currently exempted lamp types and will reassess 2013 sales by March 31, 2014, in order to determine whether an energy conservation standards rulemaking is required, consistent with 42 U.S.C. 6295(l)(4)(D)–(H).

Issued in Washington, DC, on March 5, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–05770 Filed 3–12–13; 8:45 am]

BILLING CODE 6450–01–P

[5] The least squares function is an analytical tool that DOE uses to minimize the sum of the squared residual differences between the actual historical data points and the modeled value (*i.e.,* the linear curve fit). In minimizing this value, the resulting curve fit will represent the best fit possible to the data provided.

[6] This selection is consistent with the 2010 and 2011 comparisons. See DOE's 2008 forecast spreadsheet models of the lamp types for greater detail of the estimates.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 117

[Docket No. FDA–2012–N–1258]

Draft Qualitative Risk Assessment of Risk of Activity/Food Combinations for Activities (Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm; Availability; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or ''we'') is reopening the comment period for a document entitled ''Draft Qualitative Risk Assessment of Risk of Activity/

Food Combinations for Activities (Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm'' (the draft RA) that we made available for public comment in the **Federal Register** of January 16, 2013. We are reopening the comment period to update comments and to receive any new information.

DATES: Submit either electronic or written comments by May 16, 2013.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2166.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 16, 2013 (78 FR 3824), we published a notification with a 30-day comment period announcing the availability of, and requesting comment on, a document entitled ''Draft Qualitative Risk Assessment of Risk of Activity/Food Combinations for Activities (Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm.'' The purpose of the draft RA is to provide a science-based risk analysis of those activity/food combinations that would be considered low risk. We conducted this draft RA to satisfy requirements of the FDA Food Safety Modernization Act (FSMA) to conduct a science-based risk analysis and to consider the results of that analysis in rulemaking that is required by FSMA. In the **Federal Register** of January 16, 2013 (78 FR 3646), we announced that we had used the results of the draft RA to propose to exempt certain food facilities (i.e., those that are small or very small businesses that are engaged only in specific types of onfarm manufacturing, processing, packing, or holding activities identified in the draft RA as low-risk activity/food combinations) from the proposed requirements of the Federal Food, Drug, and Cosmetic Act for hazard analysis and risk-based preventive controls (the proposed preventive controls rule). Interested persons were originally given until February 15, 2013, to comment on the draft RA.

II. Request for Comments

Following publication of the notification announcing the availability of, and requesting comment on, the draft RA, we received three requests to allow interested persons additional time to comment. The requesters asserted that the time period of 30 days was insufficient to respond fully to FDA's specific requests for comments and to allow potential respondents to thoroughly evaluate and address pertinent issues. Two requesters considered that the comment period for the draft RA should conform to the comment period of the proposed preventive controls rule. (One of these requesters further requested that the comment period conform to that of another proposed rule published in the **Federal Register** of January 16, 2013 (78 FR 3504; the proposed produce safety rule) and other major rulemakings that FDA would be conducting under FSMA but were not yet published.) For similar reasons, another requestor considered that the comment period should be extended by another 120 days, to June 14, 2013.

We have considered the requests and are reopening the comment period for the draft RA until May 16, 2013, which conforms to the comment periods of the proposed preventive controls rule and the proposed produce safety rule. We believe that this extension allows adequate time for interested persons to submit comments without significantly delaying the associated rulemaking in the proposed preventive controls rule.

III. How To Submit Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: March 7, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05730 Filed 3–12–13; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0140; FRL–9789–6]

Approval and Promulgation of Air Quality Implementation Plans: North Carolina; Control Techniques Guidelines and Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve several State Implementation Plan (SIP) revisions submitted to EPA by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), to address the nitrogen oxides (NOx) reasonably available control technology (RACT) requirements for the North Carolina portion of the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the ''bi-state Charlotte Area''). The bi-state Charlotte Area for the 1997 8-hour ozone national ambient air quality standards (NAAQS) includes six full counties and one partial county in North Carolina; and one partial county in South Carolina. Additionally, EPA is proposing to approve in part, and conditionally approve in part, several SIP revisions to address the volatile organic compounds (VOC) RACT requirements which include related control technology guidelines (CTG) requirements. Together, these SIP revisions establish the RACT requirements for sources located in the North Carolina portion of the bi-state Charlotte Area. In a separate rulemaking, EPA has already taken action on RACT and CTG requirements for the South Carolina portion of the bi-state Charlotte Area. EPA has evaluated the proposed revisions to North Carolina's SIP, and has made the preliminary determination that they are consistent, with the exception of applicability for some CTG VOC sources, with statutory and regulatory requirements and EPA guidance.

DATES: Comments must be received on or before April 12, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0140 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

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FOR FURTHER INFORMATION CONTACT: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by phone at (404) 562–9029, or via electronic mail at *spann.jane@epa.gov.*

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I. Background

On April 30, 2004, EPA designated the bi-state Charlotte Area as a moderate nonattainment area with respect to the 1997 8-hour ozone NAAQS.[1] *See* 69 FR 23858. The bi-state Charlotte Area includes six full counties and one partial county in North Carolina; and one partial county in South Carolina. The North Carolina portion of the bi-state Charlotte Area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County which includes Davidson and Coddle Creek Townships.[2] The South Carolina portion of the bi-state Charlotte Area consists of the portion of York County, South Carolina that falls within the Rock Hill-Fort Mill Area Transportation Study Metropolitan Planning Organization Area. As a result of this designation, North Carolina and South Carolina were required to amend their SIPs for their respective portions of the bi-state Charlotte Area to satisfy the requirements of section 182 of the Clean Air Act (CAA or Act). Today's action specifically addresses the North Carolina portion of the bi-state Charlotte Area. EPA approved the RACT requirements for the South Carolina portion of the bi-state Charlotte Area on November 28, 2011. *See* 76 FR 72844.

A. Statutory Requirements

Section 182(b)(2) of the CAA requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. The three parts of the section 182(b)(2) RACT requirements are: (1) RACT for sources covered by an existing CTG (i.e., a CTG issued prior to enactment of the 1990 amendments to the CAA); (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG (i.e., non-CTG sources). Pursuant to 40 CFR 51.165, a major source for a moderate ozone area is a source that emits 100 tons per year (tpy) or more of VOC or NO_X. See Section I. B. below for further information regarding major sources.

A CTG document is guidance issued by EPA which, as a result of CAA section 182(b)(2), triggers a responsibility for states to submit, as part of their SIPs, RACT rules for stationary sources of VOC that are covered by the CTG. EPA defines RACT as ''the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' *See* 44 FR 53761, 53762 (September 17, 1979). Each CTG category includes a ''presumptive norm'' or ''presumptive

[1] Portions of the bi-state Charlotte Area were previously designated as a moderate nonattainment area for the 1-hour ozone NAAQS. The Area was subsequently redesignated to attainment for the 1-hour ozone NAAQS, and a maintenance plan was approved into the North Carolina SIP. The original Charlotte–Gastonia, North Carolina 1-hour moderate ozone nonattainment area consisted of Mecklenburg and Gaston counties in North Carolina.

[2] Effective July 20, 2012, EPA designated one full county and six partial counties in the bi-state Charlotte area as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. Today's proposed actions regarding RACT are not related to requirements for the 2008 8-hour ozone NAAQS.

RACT'' that EPA believes satisfies the definition of RACT.

If a state submits a RACT rule that is consistent with presumptive RACT, the state does not need to submit additional support to demonstrate that the rule meets the CAA's RACT requirement. However, if the state decides to submit an alternative emission limit or level of control for a source or source category for which there is a presumptive RACT, the state must submit independent documentation as to why the rule meets the statutory RACT requirement.

As mentioned above section 182(b)(2) of the CAA addresses moderate and above areas for the 1-hour ozone NAAQS. Further clarification of the RACT requirements for areas classified as moderate or above for the 1997 8-hour ozone NAAQS is provided in EPA's regulations.[3] *See* 40 CFR 51.912.

The CTG established by EPA are guidance to the states and only provide recommendations. A state can develop its own strategy for what constitutes RACT for the various CTG categories, and EPA will review that strategy in the context of the SIP process and determine whether it meets the RACT requirements of the CAA and its implementing regulations. If no major sources of VOC or NO_X emissions (each pollutant should be considered separately) in a particular source category exist in an applicable nonattainment area, a state may submit a negative declaration for that category.

In addition, section 183(e) of the CAA directs EPA to: (1) List for regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in ozone nonattainment areas; and (2) divide the list of categories to be regulated into four groups. EPA published the initial list, following the 1990 CAA Amendments, in the **Federal Register** on March 23, 1995 (60 FR 15264), and has revised the list several times. *See* 71 FR 28320 (May 16, 2006), 70 FR 69759 (November 17, 2005), 64 FR 13422 (March 18, 1999), 63 FR 48792 (September 11, 1998). As authorized by CAA section 183(e)(3)(C), EPA chose to issue CTG in lieu of regulations for each listed product category. *See* 73 FR 58481 (October 7, 2008) (Group IV CTG); 72 FR 57215 (October 9, 2007) (Group III CTG); and 71 FR 58745 (October 5, 2006) (Group II CTG).

B. Requirements for RACT Analysis for Major Sources

Section 172(c)(1) of the CAA requires SIPs to provide for the implementation of all RACM as expeditiously as practicable. A subset of RACM is RACT, which relates specifically to stationary point sources. Section 182(b)(2) of the CAA requires RACT rules be adopted for all point sources of VOC and NO_X with potential to emit at least 100 tpy or greater.[4] [5]

C. Regulatory Schedule for Implementing CTG

CTG categories that were established in 1978 ultimately were required to be adopted by the states by 1990 (see schedule below for details). CAA section 182(b)(2) provides that a CTG issued after 1990 must specify the date by which a state must submit a SIP revision in response to the CTG. States were required to have the pre-1990 CAA CTG categories and post-1990 CAA CTG categories for applicable areas addressed in their SIPs according to the following schedule:

Group	**Federal Register** published	SIP Due
I	Pre-1990 CAA Amendment CTG	Pre-CAA Amendment CTG.
	As of January 1978 the first 15 CTG categories were established. Ten additional CTG categories were issued in 1978 (1 of those (vegetable oil) was rescinded).	The first 25 CTG categories were due to be adopted by the states by 1980. EPA initially approved most of these rules into the state SIPs. Subsequently, EPA reviewed these state rules to see if they were technically adequate and if they met national standards for national consistency. Based on this review, EPA issued the RACT fix-ups in 1987 (*See* general preamble (57 FR 13498, April 16, 1992)). In 1988, EPA published a technical document to address technical inadequacies found in these state adopted rules and to address minimum standards of national consistency. States were required to adopt revised rules by 1990. Congress established CTG statutory requirements in the 1990 CAA Amendments. Outstanding CTG requirements were due in 1992 (CAA Section 182(b)(2)(C)).
	Post 1990–CAA Amendment CTG The group of CTG established in 60 FR 15264, March 23, 1995, were broken into subsets called ''Group I, II, III and IV'' (some of these CTG are updates of previously established CTG)).	September 15, 2006 (40 CFR 51.912, RACT SIPs due for the 1997 8-hour ozone NAAQS).
II	71 FR 58745, October 5, 2006	October 5, 2007.
III	72 FR 57215, October 9, 2007	October 9, 2008.
IV	73 FR 58481, October 7, 2008	October 7, 2009.

[3] On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004, as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designated areas under subpart 1 and subpart 2 of the CAA. *See* 69 FR 23951. EPA's Phase II Rule, finalized on November 29, 2005, addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as RACT, reasonably available control measures (RACM), reasonable further progress, modeling and attainment demonstrations, new source review, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. *See* 70 FR 71612.

[4] The potential to emit threshold is based on an area's nonattainment designation classification. Section 182 of the CAA and 40 CFR 51.912(b) define ''major source'' for ozone nonattainment areas to include sources which emit or which have the potential to emit 100 tpy or more of VOC or NO_X (ozone precursors) in areas classified as ''marginal'' or ''moderate,'' 50 tpy or more of these ozone precursors in areas classified as ''serious,'' 25 tpy or more of these ozone precursors in areas classified as ''severe,'' and 10 tpy or more of these ozone precursors in areas classified as ''extreme.'' The bi-state Charlotte Area is a moderate nonattainment area.

[5] Section 182(b)(2) also requires that all CTG source category sources, including those with less than 100 tpy emissions meet RACT. CTG sources are addressed later in this document.

II. Analysis of the North Carolina's Submittals

NC DENR submitted final SIP revisions on October 14, 2004, April 6, 2007, June 15, 2007, January 31, 2008, November 19, 2008, September 18, 2009, February 3, 2010, April 6, 2010, and November 9, 2010, to EPA for review and approval into the North Carolina SIP. North Carolina's SIP revisions include changes made by North Carolina to its Air Quality Rules, found at Chapter15A NCAC 02D, and include changes to NC DENR's NO_X and VOC rules, including its NO_X and VOC RACT requirements. A brief description of each North Carolina SIP revision submitted to meet NO_X and VOC RACT requirements is provided in Section II. A. of this rulemaking. Section II. B. of this rulemaking provides EPA's analysis of how major sources for NO_X in the Area meet RACT requirements. Section II. C. of this rulemaking provides EPA's analysis for the individual rules being changed by North Carolina to meet NO_X and VOC RACT requirements.

Today, EPA is proposing to approve the portions of five of the aforementioned SIP revisions as they relate to RACT requirements for the North Carolina portion of the bi-state Charlotte Area (hereafter referred to as ''the Area'').[6] In addition to the SIP revisions, or portions of SIP revisions for which EPA is proposing approval, NC DENR submitted a letter on August 30, 2012, requesting that EPA conditionally approve portions of previously-submitted SIP revisions as they relate to VOC RACT and CTG requirements.[7] [8] Specifically, NC DENR committed to include appropriate applicability thresholds for VOC RACT for all sources addressed by CTG in the Area. A copy of NC DENR's letter is provided in the docket for today's rulemaking. Consequently, EPA is proposing to conditionally approve portions of five of the aforementioned SIP revisions as they relate to VOC RACT and CTG requirements for the Area. Comprehensively, these SIP revisions address NO_X RACT, VOC RACT and CTG requirements for the Area.[9]

A. Summary of North Carolina's SIP Submittals

a. October 14, 2004, SIP Submittal

On October 14, 2004, North Carolina submitted a SIP revision amending several rules. The VOC applicability Rule 15A NCAC 2D .0902, was amended to: (1) Specify what sources Rule .0902 does not apply to; (2) change the rule to address attainment for the 1-hour ozone NAAQS and nonattainment for the 8-hour ozone NAAQS; and (3) exclude emissions from startup or shutdown operations. Today, EPA is proposing to conditionally approve all changes to Rule 15A NCAC 2D .0902, with the exception of North Carolina's amendment to exclude emissions from startup or shutdown operations (15A NCAC 2D .0902 (b)(3)).[10]

Additionally, in the October 14, 2004, SIP revision, the rule which applies to petroleum liquid storage in external floating roof tanks, Rule 15A NCAC 2D .0933, was amended to clarify the seal requirements for external floating roof tanks. Today, EPA is proposing to approve all changes to Rule 15A NCAC 2D .0933 as provided in North Carolina's October 14, 2004, SIP revision.

The October 14, 2004, SIP revision, also amends NO_X Rules 15A NCAC 2D .1404, 1409, .1416 through .1419 and .1422. Rule .1404, .1409, 1418 and .1422 were amended to clarify monitoring requirements, stationary internal combustion engine requirements, offsets for new electric generating units, large boilers and large internal combustion engines, and clarifying the use of compliance supplement pool credits, respectively. NC DENR requested approval of revisions to Rules .1416, .1417, and .1419 regarding emission allocations for utility companies and large combustion sources, and regarding nitrogen oxide budget trading program but subsequently repealed these rules and submitted them for approval on November 19, 2008. The November 19, 2008, request for approval of the repeals replaces the October 14, 2004, request for rule revision approval. Today, EPA is proposing to approve all changes to Rules .1404, .1409, .1418 and .1422 provided in North Carolina's October 14, 2004, SIP revision. The changes to Rules .1416, .1417 and .1419 are replaced by the November 19, 2008, submittal.

EPA is not taking action on any of the remaining rule changes in the October 14, 2004, SIP revision.[11] These remaining rule changes will be addressed in a separate action.

b. Summary of the April 6, 2007, SIP Submittal

On April 6, 2007, North Carolina submitted a SIP revision to address RACT and meet the EPA requirements for a full SIP revision for the bi-state Charlotte Area ozone nonattainment area to address the 1997 8-hour ozone NAAQS. Specifically, the VOC applicability rule, 15A NCAC 02D .0902, and NO_X applicability rule 15A NCAC 02D .1402, were amended to require facilities with the potential to emit 100 tpy or more of VOC or NO_X to comply with RACT requirements for VOC or NO_X in the bi-state Charlotte nonattainment area for the 1997 8-hour ozone NAAQS. The VOC Compliance Schedule Rule 15A NCAC 02D .0909, and the NO_X Compliance Schedule Rule 15A NCAC 02D .1403, added compliance schedules for the facilities to comply with RACT requirements. Today, EPA is proposing to approve all changes to rules 15A NCAC 02D .1402, and .1403, and is proposing to conditionally approve all changes to rules 15A NCAC 02D .0902 and .0909, that were included as part of the April 6, 2007, SIP revision.

c. Summary of the June 15, 2007, SIP Submittals

The June 15, 2007, SIP revisions consisted of the attainment demonstration, reasonable further progress (RFP) and the RACT submissions related to the 1997 8-hour ozone NAAQS for the Area. On December 19, 2008, North Carolina withdrew its attainment demonstration that the NC DENR submitted on June 15, 2007. However, North Carolina did not withdraw its submissions for RFP or RACT. *See* 74 FR 21550 (May 9, 2009). In a previous action, EPA approved North Carolina's RFP SIP revision. *See* 77 FR 62159 (October 12, 2012). As a result, today's action only addresses

[6] SIP revisions submitted on April 6, 2007, June 15, 2007, January 31, 2008, November 19, 2008, February 3, 2010, and April 6, 2010,

[7] SIP revisions submitted on October 14, 2004, April 6, 2007, January 31, 2008, September 18, 2009, and November 9, 2010.

[8] Additional information regarding the conditional approval is found in Section III of this action.

[9] South Carolina met the RACT requirements for the South Carolina portion of the bi-state Charlotte Area.

[10] In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during start up, shut down and malfunction (SSM) of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having deficient SSM provisions to take steps to correct them as soon as possible.

[11] The remaining rule changes that EPA is not acting on in this action include 15A NCAC 2D .0101, .0521, 15A NCAC 2Q .0806, .0809, 15A NCAC 2D .1901 through .1904 and .1906. These rules address Air Pollution Control Definitions, Emission Control Standards, Permitting Requirements and Open Burning and are not required to meet RACT for the 1997 8-hour ozone standard.

North Carolina's RACT SIP for its portion of the bi-state Charlotte Area. EPA has made the preliminary determination that North Carolina's June 15, 2007, SIP revision, in combination with others addressed in this rulemaking and previous rulemakings,[12] meets RACT requirements, and thus EPA is proposing to approve North Carolina's June 15, 2007, RACT SIP revision.

d. Summary of the January 31, 2008, SIP Submittal [13]

On January 31, 2008, North Carolina submitted a SIP revision to address certain RACT requirements, and meet the EPA requirements for a full SIP revision for the bi-state Charlotte Area ozone nonattainment area to address the 1997 8-hour ozone NAAQS. Specifically, the VOC Applicability Rule 15A NCAC 02D .0902 was amended to cover facilities with the potential to emit between 50 and 100 tons of VOC per year in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek Townships in Iredell County. Additionally, North Carolina's NO_X Applicability Rule 15A NCAC 02D .1402, was amended to describe the actions to be taken at facilities with the potential to emit between 50 and 100 tons of NO_X per year.

At the time that the rules in North Carolina's January 31, 2008, SIP revision were changed and submitted to EPA, the bi-state Charlotte Area had not yet attained the 1997 8-hour ozone NAAQS, and there was a possibility that EPA would have to reclassify the bi-state Charlotte Area to a serious nonattainment area. North Carolina revised these rules as a contingency for the bi-state Charlotte Area should this area be reclassified from a ''moderate'' nonattainment area to a ''serious'' nonattainment for the 1997 8-hour ozone NAAQS.[14] The bi-state Charlotte Area subsequently attained the standard, and is currently a moderate nonattainment area. The VOC Compliance Schedule Rule 15A NCAC 02D .0909, and NO_X Compliance Schedule Rule 15A NCAC 02D. 1403 added compliance schedules for the facilities to comply with RACT requirements should the bi-state Charlotte Area fail to attain and as a result was reclassified as serious area.

EPA is now proposing to conditionally approve changes to VOC Applicability Rule 15A NCAC 02D .0902, and VOC Compliance Schedule Rule 15A NCAC 02D .0909. Additionally EPA is proposing to approve the remaining changes included in North Carolina's January 31, 2008, SIP revision regarding NO_X Applicability Rule 15A NCAC 02D .1402, and NO_X Compliance Schedule Rule 15A NCAC 02D .1403.

e. Summary of the November 19, 2008, SIP Submittal

On November 19, 2008, North Carolina submitted a SIP revision to address adoption of a new rule section (Section 15A NCAC 02D .2600) that consolidated North Carolina's protocols with federal air source testing methods from many rules located throughout North Carolina air rules. Rule amendments to or repeals of Rules 15A NCAC 02D .0901, .0912 through .0916, .0932, .0939 through .0943, .0945 were also made to cross-reference or be replaced by the new rule section 15A NCAC 02D .2600. North Carolina's November 19, 2008, SIP revision also amends Rule 15A NCAC 02D .1402 to remove reference to repealed NO_X SIP Call Rules and Rules 15A NCAC 02D .1407 through .1412, and .1415 through .1422.[15]

EPA is proposing to approve changes to Rules 15A NCAC 02D .0901, .0912, .0932, .0943, .0945, .1402, and .1415. EPA is proposing to approve the repeal of Rules 15A NCAC 02D .0913 through .0916, .0939 through .0942, and .1416 through .1422 as these provisions are no longer necessary for North Carolina's SIP. EPA is not taking action on any of the remaining rule changes in the November 19, 2008, SIP revision.[16]

f. Summary of the September 18, 2009, SIP Submittal [17]

On September 18, 2009, North Carolina submitted a SIP revision to address certain RACT requirements. First, the VOC definitions Rule 15A NCAC 02D .0901 was amended to include the definition of Stage I vapor control. Second, the VOC Applicability Rule, 15A NCAC 02D .0902, was amended to remove a subparagraph that refers to Rule 15A NCAC 02D .0953, ''Vapor Return Piping for Stage II Vapor Recovery,'' as this provision was repealed by the State. Third, the VOC Compliance Schedule Rule, 15A NCAC 02D .0909, was amended to remove reference to Stage II vapor recovery at Rules 15A NCAC 02D .0953, ''Vapor Return Piping for Stage II Vapor Recovery,'' and 15A NCAC 02D .0954, ''Stage II Vapor Recovery,'' as these provisions were repealed by the State.[18] Fourth, the ''Petition for Alternative Controls for RACT,'' Rule 15A NCAC 02D .0952, was amended to remove reference to Stage II vapor recovery at Rules 15A NCAC 02D .0953 and .0954 as these provisions were repealed by the State.

EPA is proposing to conditionally approve the changes in the September 18, 2009, SIP revision related to Rules 15A NCAC 02D .0902 and .0909. Additionally, EPA is proposing to approve the changes to Rules 15A NCAC 02D .0901 and .0952, as provided in North Carolina's September 18, 2009, SIP revision. EPA is not taking action on any of the remaining rule changes in the September 18, 2009, SIP revision.[19] These remaining rule changes will be addressed in a separate action.

g. Summary of the February 3, 2010, SIP Submittal

On February 3, 2010, North Carolina submitted a SIP revision to address a number of different rule amendments

[12] While North Carolina's June 15, 2007, submission references VOC rules 15A NCAC 2D .0901 through .0960, and NO_X rules 15A NCAC 2D .1402 through .1412, and 15A NCAC 2D .1415 through .1422, the SIP revision did not provide amendments to these rules for EPA approval. However, in its June 15, 2007, SIP revision North Carolina is using these previously approved rules as demonstration that they meet RACT requirements.

[13] The January 31, 2008, SIP revision also amended Rule 15A NCAC 02Q .0207, ''Annual Emissions Reporting.'' In an action taken on April 24, 2012, (77 FR 24382), EPA approved these revisions to Rule 15A NCAC 02Q .0207.

[14] As provided for in the CAA, on May 31, 2011, North Carolina was granted a 1 year extension of the attainment date (*See* 76 FR 31245), attained the standard prior to the extended attainment date, was not reclassified to serious and continued to be a moderate area.

[15] These rules are repealed because CAIR replaced the NO_X Budget Trading Program for North Carolina.

[16] The remaining rule changes that EPA is not acting on in this action include 15A NCAC 02D .0501, .0529, .0535, .0536, .0542, .0606, .0608, NCAC 2D .2609, .2610, .2611, .2616, .2617, .2618, .2619, .2620, NCAC 02D .1110, .1203 through .1206, .1208, .1210, and 15A NCAC 02Q .0508, .0523, .0711, and .0902. These rules address Emission Control Standards, Monitoring and Recordkeeping, Source Testing unrelated to Ozone, Toxics, Incinerators, and Permitting, and are not required to meet RACT for the 1997 8-hour ozone standard. (While Rules NCAC 2D 1104 and NCAC 2Q .0903 were listed in the submittal, North Carolina requested they not be approved into the SIP).

[17] In a letter dated November 30, 2012, North Carolina withdrew its request for EPA to approve Rule 15A NCAC 02D .0952, Petitions for Alternative Controls for RACT into the SIP.

[18] North Carolina also included a repeal of Rule 15A NCAC 02D .0953, ''Vapor Return Piping for Stage II Vapor Recovery,'' and Rule .0954, ''Stage II Vapor Recovery'' in its November 18, 2010, SIP revision. These rules are not required for RACT. EPA will address North Carolina's November 18, 2010, SIP revision as it pertains to the repeal of these rules in a separate action.

[19] The remaining rule changes that EPA is not acting on in this action include 15A NCAC 2D, .0521, .0614, NCAC 2Q .0102, .0304, and .0902. These rules address Air Pollution Control, Emission Control Standards, Monitoring and Recordkeeping and Air Quality Permit Procedures and are not required to meet RACT for the 1997 8-hour ozone standard.

including a change to the NOx applicability Rule 15A NCAC 02D .1402. Rule .1402 was amended to: (1) Add language to clarify which parts of Rule Section .1400 apply to sources covered under Clean Air Interstate Rules (CAIR), which replaced the NOx Budget Trading Program for North Carolina; (2) clarify RACT requirements in nonattainment areas; and (3) correct cross-reference errors.

EPA is proposing to approve North Carolina's changes to Rule .1402, as provided in the February 3, 2010, SIP revision. This is the only rule amendment in North Carolina's February 3, 2010, SIP revision being addressed in today's action. The remaining rule changes will be addressed in a separate action.[20]

h. Summary of the April 6, 2010, SIP Submittal

On April 6, 2010, North Carolina submitted a SIP revision to address RACT, specifically to make a negative declaration for the following four CTG categories: (1) Control of Volatile Organic Compound Leaks from Petroleum refinery Equipment (EPA–450/2–78–036, 1978/06); (2) Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit turnarounds (EPA–450/2–77–026, 1977/10); (3) Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants (EPA–450/3–83–007, 1983/12); and (4) Control Techniques Guidelines, for Shipbuilding and Ship Repair Operations (Surface Coating) (61 FR–44050 8/27/96, 1996/08).

As part of its analysis to support the negative declarations for aforementioned CTG source categories, NC DENR reviewed its permits files and emissions inventory information. After this review, NC DENR determined that there are no stationary sources or emitting facilities located in its portion of the bi-state Charlotte Area that are subject to aforementioned CTG source categories. EPA is now proposing to approve the negative declarations as provided in North Carolina's April 6, 2010, SIP revision.

i. Summary of the November 9, 2010, SIP Submittal[21]

On November 9, 2010, North Carolina submitted a SIP revision amending, adopting, and repealing various RACT rules. First, Rule 15A NCAC 02D .0902, VOC Applicability was amended to extend the work practice standards in Rule 15A NCAC 02D .0958 to all sources of VOC in the State, and to clarify that all areas that become subject to the VOC RACT rules shall continue to comply with those rules after the Area is redesignated to attainment. Second, Rule 15A NCAC 02Q .0306, ''Permits Requiring Public Participation;'' Rule 15A NCAC 02D .0909, ''Compliance Schedules for Sources in Nonattainment Areas;'' Rule 15A NCAC 02D .0951, ''Metal Furniture Coatings Rule;'' and 15A NCAC 02D .0952 ''Petition for Alternative controls for RACT'' were amended to change cross-references.

Third, Rule 15A NCAC 02D .0922, ''Metal Furniture Coatings'' was amended to control VOC emissions from metal furniture coatings by establishing three alternatives. Fourth, Rule 15A NCAC 02D .0923, ''Surface Coating of Large Appliance Parts'' was amended to control VOC emissions from large appliance coatings by establishing three alternatives. Fifth, Rule 15A NCAC 02D .0935, ''Factory Surface Coating of Flat Wood Paneling'' was amended to establish new emission limits for inks, coatings and adhesives used by the flat wood paneling coating facilities.

Sixth, Rule 15A NCAC 02D .0961, ''Offset Lithographic Printing and Letterpress Printing'' was adopted to control VOC emissions from heatset inks, fountain solution and cleaning materials used in offset lithographic printing operations, as well as VOC emissions from heatset inks used in letterpress printing operations at the level sufficient for RACT requirements. Seventh, Rule 15A NCAC 02D .0962, ''Industrial Cleaning Solvents'' was adopted to define measures for controlling emissions of VOC from the use, storage, and disposal of industrial cleaning solvents. Eighth, Rule 15A NCAC 02D .0963, ''Fiberglass Boat Manufacturing'' was adopted to control VOC emissions from open molding resin and gel coat operations (pigmented gel coat, clear gel coat, production resin, tooling gel coat, and tooling resin); resin and gel coat mixing operations; and resin and gel coat application equipment cleaning operations at the level sufficient for RACT requirements. Ninth, Rule 15A NCAC 02D .0964, ''Miscellaneous Industrial Adhesives'' was adopted to control VOC emissions from miscellaneous industrial adhesives; it establishes VOC emission limits based on application processes (general adhesive application processes, specialty adhesive application processes and adhesive primer application processes.)

Tenth, Rule 15A NCAC 02D .0965, ''Flexible Package Printing'' was adopted to provide equivalent VOC content limits, which can be met by use of low VOC content materials or combinations of materials and controls. Eleventh, Rule 15A NCAC 02D .0966, ''Paper, Film and Foil Coatings'' was adopted to establish an overall VOC control efficiency of 90 percent for each coating line along with emission limits that are equivalent to 90 percent overall control. Twelfth, Rule 15A NCAC 02D .0967, ''Miscellaneous Metal and Plastic Parts Coatings'' was adopted to control VOC emissions from miscellaneous metal and plastic part surface coatings. Finally, Rule 15A NCAC 02D .0968, ''Automobile and Light-Duty Truck Assembly Coatings'' was adopted to establish VOC emission limits based on application processes (general adhesive application processes, specialty adhesive application processes, and adhesive primer application processes).

Additionally, in the November 9, 2010, SIP revision, North Carolina repealed Rules 15A NCAC 02D .0917, ''Automobile and Light-duty Truck Manufacturing;'' 15A NCAC 02D .0920 ''Paper Coating;'' 15A NCAC 02D .0921, ''Fabric and Vinyl Coating;'' 15A NCAC 02D .0934, ''Coating of Miscellaneous Metal Parts and Products;'' and 15A NCAC 02D .0936, ''Graphic Art'' because North Carolina adopted new rules to address all of these categories.

EPA is proposing to conditionally approve the changes to Rules 15A NCAC 02D .0902, .0909, .0951, .0961 and .0962. Also, EPA is proposing to approve the changes to Rules 15A NCAC 02D .0922, .0923, .0935, .0952, .0963 through .0968, and 15A NCAC 02Q .0306. Further EPA is proposing to approve the repeal of Rules 15A NCAC 02D .0917, ''Automobile and Light-duty Truck Manufacturing;'' 15A NCAC 02D .0920, ''Paper Coating;'' 15A NCAC 02D .0921, ''Fabric and Vinyl Coating;'' 15A NCAC 02D .0934, ''Coating of Miscellaneous Metal Parts and Products;'' and 15A NCAC 02D .0936, ''Graphic Art.'' The remaining rule changes in the November 9, 2010, SIP revision will be addressed in a separate action.[22]

B. RACT Analysis for Major Sources for NOx

In the mid 1990s, North Carolina's Division of Air Quality completed a

[20] The remaining rule changes that EPA is not acting on in this action include 15A NCAC 02D, .0405, .0408 .0409, and .0410. These rules address Ambient Air Quality Standards and are not required to meet RACT for the 1997 8-hour ozone standard.

[21] In a letter dated November 30, 2012, North Carolina withdrew its request for EPA to approve Rule 15A NCAC 02D .0952, ''Petitions for Alternative Controls for RACT'' into the SIP.

[22] The remaining rule changes that EPA is not acting on in this action include NCAC 2Q, .0306. This rule addresses permit requirements and is not required to meet RACT for the 1997 8-hour ozone standard.

technical analysis and determined that the entire state is NOx limited[23] and that the control program for reducing ozone should therefore be focused on NOx emission reductions. Consistent with this finding, North Carolina pursued a number of regulatory efforts to reduce NOx statewide, several of which were directed at Electricity Generating Unit (EGU) emissions. Specifically, NC DENR adopted measures to comply with the NOx SIP Call rule and the General Assembly passed the Clean Smokestacks Act (CSA). In addition NC DENR adopted rules to implement CAIR. These programs, which are described further below, substantially lowered NOx emissions in the bi-state Charlotte Area.

In October 1998, EPA made a finding of significant contribution of NOx emissions from certain states and published a rule that set ozone season NOx budgets for the purpose of reducing regional transport of ozone (63 FR 57356). This rule, referred to as the NOx SIP Call rule, called for, among other things, ozone season controls to be put on utility and industrial boilers, as well as internal combustion engines in 22 states in the Eastern United States. As noted above, in October 2000, the North Carolina Environmental Management Commission adopted similar rules requiring these reductions. When the North Carolina's NOx SIP Call rule[24] was adopted NC DENR concluded that the NOx SIP Call would reduce summertime NOx emissions from power plants and other industries by 68 percent by 2006. As part of the rulemaking and consistent with EPA guidance, the North Carolina Environmental Management Commission established a NOx trading program, allowing sources to buy credits to meet their NOx budget as opposed to actually installing controls. The emission budgets were to be met by the beginning of 2004.

As mentioned above, in June 2002, the North Carolina General Assembly enacted the CSA.[25] CSA reduces NOx emissions beyond the requirements of the NOx SIP Call rule and required coal-fired power plants to reduce annual NOx emissions by 78 percent by 2009.

In response to the EPA's CAIR, the NC DENR developed a state version of CAIR. Under EPA's rule, North Carolina is distributed a statewide budget for NO_X. These NO_X allowances, in turn, have been allocated to the affected facilities in North Carolina by the NC DENR. For the most part, the rules incorporate EPA's model rule. NC DENR adopted North Carolina's CAIR on March 9, 2006, and the rule became effective July 1, 2006.

On November 29, 2005 (70 FR 71612), EPA published an ozone implementation rule to address nonattainment SIP requirements for the 1997 8-hour ozone NAAQS (the ''Phase 2 Ozone Implementation Rule''). The Phase 2 Ozone Implementation Rule addressed various statutory requirements, including the requirement for RACT level controls for sources located within nonattainment areas generally, and controls for NO_X emissions from EGUs in particular. Through the Phase 2 Ozone Implementation Rule, EPA also provided its determination that the regional NO_X emissions reductions that result from either the NO_X SIP Call or CAIR would meet the NO_X RACT requirement for EGUs located in states included within the respective NO_X SIP Call or the CAIR geographic regions. Thus, EPA concluded that: ''[t]he State need not perform a NO_X RACT analysis for sources subject to the State's emission cap-and-trade program where the cap-and-trade program has been adopted by the State and approved by EPA as meeting the NO_X SIP Call requirements or, in States achieving the CAIR reductions solely from electric generating units (EGUs), the CAIR NO_X requirements.''[26] Based on the then existing EPA guidance, NC DENR concluded that the NO_X SIP Call rule, the CSA, and CAIR, in aggregate, sufficiently addressed the implementation of RACT for point sources.

In November 2008, several parties challenged EPA's Phase 2 Ozone Implementation Rule. In particular, they challenged EPA's determination that compliance with the NO_X SIP Call and/or CAIR could satisfy NO_X RACT requirements for EGUs in nonattainment areas and EPA's determination that compliance with CAIR could satisfy NO_X RACT for EGUs in ozone nonattainment areas. As a result of this litigation, the court decided that the provisions in the Phase 2 Ozone Implementation Rule providing that a state need not perform (or submit) a NO_X RACT analysis for EGU sources subject to a cap-and-trade program that meets the requirements of the NO_X SIP Call were inconsistent with the statutory requirements of section 172(c)(1).[27] The court specifically held that the Phase 2 Ozone Implementation Rule allowing use of the NO_X SIP call to constitute RACT without any locally applicable analysis regarding the equivalence of NO_X SIP Call and RACT reductions: ''Is inconsistent with the Clean Air Act * * * in allowing participation in a regional cap-and-trade program to satisfy an area-specific statutory mandate.'' The court emphasized that: ''The RACT requirement calls for reductions in emissions from sources in the area * * * [and that] reductions from sources outside the nonattainment area do not satisfy the requirement * * * [a]ccordingly, participation in the NO_X SIP call would constitute RACT only if participation entailed at least RACT-level reductions in emissions from sources within the nonattainment area.'' In view of its decision in *North Carolina* v. *EPA,* in which the Court had previously remanded CAIR, the court deferred consideration of the litigant's challenge to the Phase 2 Ozone Implementation Rule insofar as they related to the CAIR program. In light of the above, as well as a 2007 petition for reconsideration that EPA granted on this issue as it pertains to CAIR,[28] EPA is proposing in this action to not approve the presumption or determination that CAIR or the NO_X SIP Call constitutes RACT for EGU sources in the Area. However, after evaluating controls at individual point sources, EPA has determined that the point sources in the area have implemented RACT. This analysis is included below.

NC DENR identified six facilities in the North Carolina portion of the bi-state Charlotte Area that are or were major sources of NO_X. Table 1 summarizes their emissions in 2003 and in 2011. NO_X controls installed on these facilities have resulted in an average of 69 percent reduction across the bi-state Charlotte Area.

[23] NOx and VOC are precursors to ozone. NOx limited is a term that describes an area in which naturally occurring VOCs are so high that a reduction of manmade VOC does not measurably reduce ozone. Therefore, a focus is placed on NOx reductions instead of a combination of NOx and VOC reduction.

[24] This was federally approved into the SIP. See 67 FR 78987, December 27, 2002.

[25] This was federally-approved into the SIP on September 26, 2011. *See* 76 FR 59250.

[26] *See* Phase 2 Ozone Implementation Rule, 70 FR 71617.

[27] *See NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009).

[28] *See* Earthjustice Petition for Reconsideration of the Clean Air Fine Particle Rule, June 25, 2007. *See* also April 25, 2011, letter from EPA Administrator Lisa P. Jackson to Paul Cort, Earthjustice, responding to the June 25, 2007, petition for reconsideration.

TABLE 1—NO_X POINT SOURCES IN THE BI-STATE CHARLOTTE AREA

EGU	2003 Annual NO_X (tons)	2011 Annual NO_X (tons)	NO_X Control
Duke Energy Buck Steam Station	3,104	646	Three boilers with separated overfire air (SOFA) and two boilers with SOFA and selective non-catalytic reduction (SNCR) NO_X control systems. Shut down Scheduled by 2015. Useful life would preclude installing any additional controls.
Rowan County Power	67	127	Gas unit limits are 0.045 lb/million British thermal units (MMBtu) and 0.01 lb/MMBtu. Oil unit limits are 0.176 lb/MMBtu for units 1–3 and 0.054 lb/MMBtu for units 5 and 6. The facility predominately uses gas but has some oil start up. Meets Best Available Control Technology (BACT). (Title V Permit 08758T11).
Duke Energy Lincoln	68	87	Water injection, Meets New Source Performance Standards (NSPS) Subpart GG, Meets BACT (Title V Permit 07171T09).
Duke Energy Riverbend	5,508	1,106	SOFA and SNCR Shut down Scheduled by 2015. Useful life would preclude installing any additional controls
Duke Energy G.G. Allen Plant	10,992	4,401	SNCR on Units 2&4; Lowered Fire Incremental Respacing (LOFIR) low NO_X burner System, with Closed-coupled/Separated OFA on units 1,3, & 5. Meets RACT.
Kannapolis Energy Partners	946	0	No longer in operation
Total	20,685	6,367	

Three of the facilities, Duke Energy Buck Steam Station, and Duke Energy Riverbend and Kannapolis Energy Partners have shut down or plan to shut down by 2015. Kannapolis Energy Partners is no longer in operation. Duke Buck and Riverbend are shutting down these units pursuant to conditions in state issued prevention of significant deterioration permits and in order to comply with the provisions of North Carolina's CSA. Because of the time necessary to install additional controls and the limited remaining useful life between now and 2015 for the two operating facilities (Duke Energy Buck Steam Station, and Duke Energy Riverbend), a cost effectiveness analysis based on one or two years of operation would preclude any additional controls from being considered RACT.

Two of the facilities, Rowan County Power and Duke Energy Lincoln, have been through a BACT analysis and the controls adopted for BACT are consistent with or more stringent than those that would be required for RACT. Duke's G.G. Allen Plant has installed SNCR on two units and a two-tiered LOFIR combustion controls on the remaining three units to achieve NO_x emissions reductions beyond those normally achieved from Low NO_X burners at Duke's G.G. Allen Plant.

In aggregate, after the planned shutdowns occur, the bi-state Charlotte Area will have reduced NO_X emissions by 77 percent from 2003 NO_X emission levels. Because each of the units has installed NO_X controls to meet BACT requirements, or to comply with existing source NO_X requirements such as CAIR, the NO_X SIP call rule or CSA requirements or is scheduled to be shutdown, EPA has concluded that the reductions in place at these facilities in the bi-state Charlotte Area have resulted, in aggregate, in at least RACT-level reductions in the bi-state Charlotte Area. Thus, EPA is now taking action to approve North Carolina's rule revisions as meeting NO_X RACT requirements for the bi-state Charlotte Area.[29]

C. EPA's Analyses of Individual Rule Amendments and Adoptions

This section will provide a rule by rule analysis of the rules submitted in the SIP revisions. North Carolina's rule 15A NCAC 02D .0900 addresses VOC; Rule 15A NCAC 02D .1400 addresses NO_X; and Rule 15A NCAC 02D .2600 addresses Source Testing. Below summarizes the specifics of each rule and EPA's analyses for these rule changes.

a. CTG Rules

1. Rule 15A NCAC 02D .0915, ''Determination of Solvent Metal Cleaning VOC Emissions''

On October 5, 2006 (71 FR 58745), as part of the Group II CTG, EPA updated the portion of the 1977 Solvent Metal Cleaning CTG regarding the control of VOC emissions from the use of industrial cleaning solvents. North Carolina originally adopted this rule in 1979, amended it November 1, 1984, and submitted it to EPA for approval on November 8, 1984. EPA approved it into the federally-approved SIP on December 19, 1986, (51 FR 45468). The state rule was amended numerous times after that. Rule 15A NCAC 02D .0915 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

On June 1, 2008, North Carolina repealed this rule, and replaced it with existing Rule 15A NCAC 02D .0930, ''Solvent Metal Cleaning;'' and requirements found in Rule 15A NCAC 02D .2613. In a SIP revision on November 19, 2008, North Carolina submitted this repeal to EPA for approval. Today, EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and to approve the repeal of Rule 15A NCAC 02D .0915, as submitted in North Carolina's November 19, 2008, SIP revision. EPA is also proposing to approve submittals that include Rules 15A NCAC 02D .0930, and .2613. Below provides more details regarding EPA's proposed approval of Rules 15A NCAC 02D .0930, and .2613.

2. Rule 15A NCAC 02D .0916, ''Determination: VOC Emissions From Bulk Gasoline Terminals''

In 1977, EPA established a CTG addressing the control of VOC emissions from bulk gasoline plants. North Carolina originally adopted this rule in 1979, amended it November 1, 1984, and submitted it to EPA for approval on November 8, 1984. EPA approved it into the federally-approved SIP on December 19, 1986, (51 FR 45468). The state rule was amended numerous times after that. Rule 15A NCAC 02D .0916 was referenced in the appendix of the June

[29] These rule revisions are included as portions of the following submittals: April 6, 2007, June 15, 2007, January 31, 2008, November 19, 2008 and February 3, 2010.

15, 2007, SIP revision but no rule change was made at that time.

On June 1, 2008, North Carolina repealed this rule and replaced it with Rule 15A NCAC 02D .0927, ''Solvent Metal Cleaning;'' and requirements found in Rule 15A NCAC 02D .2613. In a SIP revision on November 19, 2008, North Carolina submitted this repeal to EPA for approval. Today, EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and to approve the repeal of Rule 15A NCAC 02D .0916, as submitted in North Carolina's November 19, 2008, SIP revision. EPA is also proposing to approve Rules 15A NCAC 02D .0927, and .2613. Below provides more details regarding EPA's proposed approval of Rules 15A NCAC 02D .0927, and .2613.

3. Rule 15A NCAC 02D .0917, ''Automobile and Light Duty Truck Manufacturing''

In May 1977, EPA issued a CTG document (1977 CTG) for controlling VOC emissions from surface coating of automobiles and light-duty trucks. On October 7, 2008 (73 FR 58481), EPA updated the 1977 CTG, as part of Group IV CTG, addressing the control of VOC emissions from automobile and light-duty truck manufacturing.

North Carolina originally adopted this rule in 1979, amended it a number of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on July 21, 1994, (59 FR 37162). The rule was amended numerous times after that and submitted to EPA for SIP approval on July 1, 1996. EPA approved these amendments into the federally-approved SIP on August 1, 1997, (62 FR 41277). Rule 15A NCAC 02D .0917 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

On September 1, 2010, North Carolina repealed this rule and replaced it with Rule 15A NCAC 02D .0968, ''Automobile and Light Duty Truck Assembly Coatings.'' In a SIP revision on November 9, 2010, North Carolina submitted this repeal to EPA for approval. Today, EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and to approve the repeal of Rule 15A NCAC 02D .0917, as submitted in North Carolina's November 9, 2010, SIP revision. EPA is also proposing to approve Rule .0968. A detailed rationale is provided below regarding EPA's proposed approval of Rule .0968.

4. Rule 15A NCAC 02D .0920, ''Paper Coatings''

In May 1977, EPA established a CTG addressing the control of VOC emissions from paper coating operations. On October 9, 2007 (73 FR 57215), EPA updated the 1977 CTG, as part of Group III CTG, addressing the control of VOC emissions from paper, film and foil coating operations. North Carolina originally adopted this rule in 1979, amended it a number of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on July 21, 1994, (59 FR 37162). The rule was amended again and submitted to EPA for SIP approval on August 16, 1996. EPA approved these amendments into the federally-approved SIP on August 1, 1997, (62 FR 41277). Rule .0920 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

On September 1, 2010, North Carolina repealed this rule and replaced it with Rule 15A NCAC 02D .0966, ''Paper Film and Foil Coatings.'' In a SIP revision on November 9, 2010, North Carolina submitted this repeal to EPA for approval. Today, EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and to approve the repeal of Rule .0920, as submitted in North Carolina's November 9, 2010, SIP revision. EPA is also proposing to approve Rule .0966. A detailed rationale is provided below regarding EPA's proposed approval of Rule .0966.

5. Rule 15A NCAC 02D .0921, ''Fabric and Vinyl Coating''

In May 1977, EPA established a CTG addressing the control of VOC emissions from fabric and vinyl coating operations. North Carolina originally adopted this rule in 1979, amended it a couple of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on July 21, 1994, (59 FR 37162). The rule was amended again and submitted to EPA for SIP approval on August 16, 1996. EPA approved these amendments into the federally-approved SIP on August 1, 1997, (62 FR 41277). Rule .0921 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

On September 1, 2010, North Carolina repealed this rule and replaced it with Rule 15A NCAC 02D .0965, ''Flexible Package Printing.'' In a SIP revision on November 9, 2010, North Carolina submitted this repeal to EPA for approval. Today, EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and to approve the repeal of Rule .0921, as submitted in North Carolina's November 9, 2010, SIP revision. EPA is also proposing to approve Rule .0965. A detailed rationale is provided below regarding EPA's proposed approval of Rule .0965.

6. Rule 15A NCAC 02D .0922, ''Metal Furniture Coating''

In June 1978, EPA established a CTG addressing the control of VOC emissions from Metal Furniture Coating. On October 9, 2007 (73 FR 57215), EPA updated the 1978 CTG, as part of Group III CTG, addressing control of VOC emissions from metal furniture coating operations. North Carolina originally adopted this rule in 1979, amended it a couple of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on July 21, 1994, (59 FR 37162). The rule was amended again and submitted to EPA for SIP approval on August 16, 1996. EPA approved these amendments into the federally-approved SIP on August 1, 1997, (62 FR 41277). Rule .0922 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

Changes to this rule were state-effective September 1, 2010, and submitted in a SIP revision on November 9, 2010, for EPA approval. The rule was amended to control VOC emissions from metal furniture coatings by establishing three alternatives. EPA has evaluated North Carolina's changes and is proposing to approve into the SIP the June 15, 2007, SIP revision as it relates to RACT, and North Carolina's November 9, 2010, SIP revision as it relates to metal furniture coating.

7. Rule 15A NCAC 02D .0923, ''Surface Coating of Large Appliance Parts''

In May 1977, EPA established a CTG addressing the control of VOC emissions from large appliance surface coating operations. On October 9, 2007 (73 FR 57215), EPA updated the 1977 CTG, as part of Group III CTG, addressing the control of VOC emissions from large appliance surface coating operations. North Carolina originally adopted this rule in 1979, amended it a couple of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on July 21, 1994, (59 FR 37162). The rule was amended again and submitted to EPA for SIP approval on August 16, 1996. EPA approved these amendments into the federally-approved SIP on August 1, 1997, (62 FR 41277). Rule .0923 was referenced in the appendix of

the June 15, 2007, SIP revision but no rule change was made at that time.

Changes to this rule were state-effective September 1, 2010, and submitted in a SIP revision on November 9, 2010, for EPA approval. The rule was amended to control VOC emissions from large appliance coatings by establishing three alternatives. EPA has evaluated North Carolina's changes and is proposing to approve into the SIP the June 15, 2007, SIP revision as it relates to RACT, and North Carolina's November 9, 2010, SIP revision as it relates to large appliance coatings.

8. Rule 15A NCAC 02D .0929, ''Petroleum Refinery Sources''

In 1978, EPA established a CTG addressing the control of VOC emissions from bulk gasoline plants. North Carolina originally adopted this rule in 1979, amended it a couple of times and submitted it to EPA for approval on April 29, 1991. EPA approved it into the federally-approved SIP on June 23, 1994, (59 FR 32362).

Rule .0929 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. In an April 6, 2010, SIP revision, North Carolina made a negative declaration for this CTG source category stating that there are no applicable sources in the North Carolina portion of the bi-state Charlotte Area. As part of its analysis to support the negative declarations for aforementioned CTG source categories, NC DENR reviewed its permits files and emissions inventory information. After this review, NC DENR determined that there are no stationary sources or emitting facilities located in its portion of the bi-state Charlotte Area that are subject to aforementioned CTG source categories. EPA is now proposing to approve the negative declaration as provided in North Carolina's April 6, 2010, SIP revision. Today, EPA is also proposing to approve the June 15, 2007, SIP revision as it relates to the RACT requirements.

9. Rule 15A NCAC 02D .0930, ''Solvent Metal Cleaning''

On October 5, 2006 (71 FR 58745), as part of the Group II CTG, EPA updated the portion of the 1977 Solvent Metal Cleaning CTG regarding the control of VOC emissions from the use of industrial cleaning solvents. North Carolina originally adopted Rule 15A NCAC 02D .0915, ''Determination of Solvent Metal Cleaning VOC Emissions'' and Rule .0930, ''Solvent Metal Cleaning'' in 1979. Rule .0915 was amended and submitted to EPA for approval on April 29, 1991. EPA approved the rule change on June 23, 1994, (59 FR 32362). Rule 0930, was amended and submitted to EPA for approval on April 17, 1990. EPA approved the rule change on June 23, 1994, (59 FR 32362).

On June 1, 2008, North Carolina repealed Rule .0915, ''Determination of Solvent Metal Cleaning VOC Emissions'' and replaced it with Rule .0930, ''Solvent Metal Cleaning'' and rules in section Rule 15A NCAC 02D .2600. In a SIP revision on November 19, 2008, North Carolina submitted this repeal to EPA for approval. Today, EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT (Rule .0930, Solvent Metal Cleaning was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time), and to approve the repeal of Rule .0915.

10. Rule 15A NCAC 02D .0932, ''Gasoline Truck Tanks and Vapor Collection System''

In 1978 EPA established a CTG addressing VOC emissions from Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems. North Carolina originally adopted this Rule .0932 in 1980. The following shows the state submittals and corresponding EPA approvals:

Date state submitted to EPA	Date of EPA approval	**Federal Register** approval
April 17, 1990	July 21, 1994	59 FR 37162.
April 29, 1991	June 23, 1994	59 FR 32362.
August 7, 2002	December 27, 2002	67 FR 78980.
April 4, 2003	September 17, 2003	68 FR 54362.

Rule .0932 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. Rule .0932 was also amended to correct a cross-reference error, and submitted to EPA for approval on November 19, 2008. Today, EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT. EPA is also proposing to approve the changes to Rule .0932 as provided in North Carolina's November 19, 2008, SIP revision.

11. Rule 15A NCAC 02D .0933, ''Petroleum Liquid Storage in External Floating Roof Tanks''

In 1978 EPA established a CTG addressing VOC emissions from petroleum liquid in external floating roof tanks. North Carolina originally adopted this Rule .0933 in 1980. The following shows the state submittals and corresponding EPA approvals:

Date State submitted to EPA	Date of EPA approval	**Federal Register** approval
April 17, 1990	July 21, 1994	59 FR 37162.
April 29, 1991	June 23, 1994	59 FR 32362.
July 1, 1995	February 1, 1996	62 FR 3589.

Changes to this rule were state effective August 1, 2004, and submitted to EPA on October 14, 2004, for SIP approval. The rule was amended to clarify the seal requirements for external floating roof tanks. Rule .0933 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. Today, EPA is proposing to approve North Carolina's October 14, 2004, SIP revision as related to Rule .0933.

12. Rule 15A NCAC 02D .0934, ''Coating of Miscellaneous Metal Parts and Products''

In June 1978, EPA issued a CTG document to address the control of VOC emissions from surface coating of Miscellaneous Metal Parts and Products. On October 7, 2008 (73 FR 58481), EPA updated the 1978 CTG, as part of Group IV CTG, addressing the control of VOC emissions from surface coating of miscellaneous metal parts and products.

North Carolina originally adopted this rule in 1980, amended it a couple of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on July 21, 1994, (59 FR 37162). The rule was amended again and submitted to EPA for SIP approval on April 29, 1991. EPA approved these amendments into the federally-approved SIP on June 23, 1994, (59 FR 32362). The rule was amended again and submitted to EPA for SIP approval on August 16, 1996. EPA approved these amendments into the federally-approved SIP on August 1, 1997, (62 FR 41277). Rule .0934 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

On September 1, 2010, North Carolina repealed this rule and replaced it with Rule 15A NCAC 02D .0967, ''Miscellaneous Metal and Plastic Parts Coatings,'' and on November 9, 2010, submitted this repeal to EPA for approval. EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and to approve North Carolina's November 9, 2010, SIP revision repealing Rule .0934. EPA will also be taking action to propose approval of Rule .0967.

13. Rule 15A NCAC 02D .0935, ''Factory Surface Coating of Flat Wood Paneling''

In June 1978, EPA issued a CTG document to address the control of VOC emissions from surface coating of flat wood paneling. On October 5, 2006 (71 FR 58745), EPA updated the 1978 CTG, as part of Group II CTG, addressing the control of VOC emissions from surface coating of flat wood paneling operations.

North Carolina originally adopted this rule in 1980, amended it a couple of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on July 21, 1994, (59 FR 37162). The rule was amended again and submitted to EPA for SIP approval on August 16, 1996. EPA approved these amendments into the federally-approved SIP on August 1, 1997, (62 FR 41277). Rule .0935 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

Changes to this rule were state effective September 1, 2010, and submitted to EPA on November 9, 2010, for SIP approval. The rule was amended to establish new emission limits for inks, coatings and adhesives used by the flat wood paneling coating facilities. The amendments offer two alternatives. EPA is proposing to approve into the SIP the June 15, 2007, SIP revision as it relates to RACT, and North Carolina's November 9, 2010, SIP revision as it relates to Rule .0935.

14. Rule 15A NCAC 02D .0936, ''Graphic Arts (Repealed)''

In December 1978, EPA published a CTG for graphic arts (rotogravure printing and flexographic printing) that included flexible packaging printing. On October 5, 2006 (71 FR 58745), EPA updated the1978 CTG, as part of Group II CTG, addressing the control of VOC emissions from graphic arts systems consisting of packaging rotogravure, publication rotogravure or flexographic printing operations. North Carolina originally adopted this rule in 1980, amended it a couple of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on June 23, 1994, (59 FR 32362). Rule .0936 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

On September 1, 2010, North Carolina repealed this rule and replaced it with Rule 15A NCAC 02D .0961, ''Offset Lithographic Printing and Letterpress Printing'' and Rule 15A NCAC 02D .0965, ''Flexible Package Printing,'' and on November 9, 2010, submitted this repeal to EPA for approval. EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and the November 9, 2010, SIP revision repealing Rule .0936. Below EPA is also taking action to propose approval of Rule .0961 and Rule .0965.

15. Rule 15A NCAC 02D .0943, ''Synthetic Organic Chemical and Polymer Manufacturing''

In 1984 EPA established a CTG addressing VOC emissions from Synthetic Organic Chemical Polymers and Resins. North Carolina originally adopted this Rule .0943 in 1985 amended it and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on June 23, 1994 (59 FR 32362). Rule .0943 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. Rule .0943 was also amended to cross reference new rules in Section 15A NCAC 02D .2600 and submitted to EPA for approval on November 19, 2008. EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and of North Carolina's November 19, 2008, SIP revision as it relates to Rule .0943.

16. Rule 15A NCAC 02D .0945, ''Petroleum Dry Cleaning''

In 1982 EPA established a CTG addressing VOC emissions from Petroleum Dry Cleaners. North Carolina originally adopted this Rule .0945 in 1985, amended it, and submitted it to EPA for approval on March 14, 1986. EPA approved it into the federally-approved SIP on November 19, 1986 (51 FR 41786). Rule .0945 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

Rule .0945 was also amended to cross-reference new rules in Section 15A NCAC 02D .2600 and submitted to EPA for approval on November 19, 2008. EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and of North Carolina's November 19, 2008, SIP revision as it relates to Rule .0945.

17. Rule 15A NCAC 02D .0961, ''Offset Lithographic Printing and Letterpress Printing''

In December 1978, EPA published a CTG for graphic arts (rotogravure printing and flexographic printing) that included flexible packaging printing. On October 5, 2006 (71 FR 58745), EPA updated the 1978 CTG, as part of Group II CTG, addressing the control of VOC emissions from graphic arts systems consisting of packaging rotogravure, publication rotogravure or flexographic printing operations. North Carolina originally adopted Rule 15A NCAC 02D .0936, ''Graphic Arts'' in 1980, amended it and submitted it to EPA for approval into the federally-approved SIP. In a November 9, 2010, SIP revision North Carolina repealed Rule .0936, ''Graphic Arts'' and replaced it in part with Rule 15A NCAC 02D .0961, ''Offset Lithographic Printing and Letterpress Printing.''

North Carolina originally adopted Rule .0961 on September 1, 2010, and submitted it for EPA approval on November 9, 2010. The rule was adopted to replace in part Rule .0936, ''Graphic Arts.'' EPA is proposing to conditionally approve North Carolina's November 9, 2010, SIP revision as related to Rule .0936.

18. Rule 15A NCAC 02D .0962, ''Industrial Cleaning Solvents''

On October 5, 2006 (71 FR 58745), as part of the Group II CTG, EPA updated the portion of the 1977 Solvent Metal Cleaning CTG regarding the control of VOC emissions from the use of industrial cleaning solvents. North Carolina originally adopted Rule .0962, on September 1, 2010, and submitted it to EPA for approval into the federally-approved SIP on November 9, 2010. EPA is proposing to conditionally approve into the SIP the November 9, 2010, SIP revision as related to .0962.

19. Rule 15A NCAC 02D .0963, ''Fiberglass Boat Manufacturing''

On October 7, 2008 (73 FR 58481), EPA established a CTG, as part of the Group IV CTG, addressing the control of VOC emissions from the fiberglass boat manufacturing industry. North Carolina originally adopted Rule .0963, on September 1, 2010, and submitted it to EPA for approval into the federally-approved SIP on November 9, 2010. EPA is proposing to approve into the SIP the November 9, 2010, SIP revision as related to Rule .0963.

20. Rule 15A NCAC 02D .0964, ''Miscellaneous Industrial Adhesives''

On October 7, 2008 (73 FR 58481), EPA established a CTG, as part of Group IV CTG, addressing the control of VOC emissions from the use of miscellaneous industrial adhesives. North Carolina originally adopted Rule .0964, on September 1, 2010, and submitted it to EPA for approval into the federally-approved SIP on November 9, 2010. EPA is proposing to approve into the SIP the November 9, 2010, SIP revision as related to Rule .0964.

21. Rule 15A NCAC 02D .0965, ''Flexible Package Printing''

In December 1978, EPA published a CTG for graphic arts (rotogravure printing and flexographic printing) that included flexible packaging printing. On October 5, 2006 (71 FR 58745), EPA updated the 1978 CTG, as part of Group II CTG, addressing the control of VOC emissions from graphic arts systems consisting of packaging rotogravure, publication rotogravure or flexographic printing operations. North Carolina originally adopted Rule 15A NCAC 02D .0936, ''Graphic Arts'' in 1980, amended it and submitted it to EPA for approval into the federally-approved SIP. In a November 9, 2010, SIP revision North Carolina repealed Rule .0936, ''Graphic Arts'' and replaced it in part with Rule .0965, ''Flexible Package Printing.''

North Carolina originally adopted Rule .0965 on September 1, 2010, and submitted it for EPA approval on November 9, 2010. The rule was adopted to replace in part Rule .0936 Graphic Arts. EPA is proposing to approve into the SIP the November 9, 2010, SIP revision as related to Rule .0965.

22. Rule 15A NCAC 02D .0966, ''Paper, Film and Foil Coatings''

In May 1977, EPA established a CTG addressing the control of VOC emissions from paper coating operations. On October 9, 2007 (73 FR 57215), EPA updated the 1977 CTG, as part of Group III CTG, addressing the control of VOC emissions from paper, film and foil coating operations. North Carolina originally adopted Rule 15A NCAC 02D .0920, ''Paper Coatings'' in 1979, amended it and submitted it to EPA for approval into the federally-approved SIP. On September 1, 2010, North Carolina repealed Rule .0920, ''Paper Coatings,'' and replaced it with Rule .0966, ''Paper Film and Foil Coatings,'' and on November 9, 2010, submitted this repeal to EPA for approval.

North Carolina originally adopted Rule .0966 on September 1, 2010 and submitted it for EPA approval on November 9, 2010. The rule was adopted to replace Rule .0920 ''Paper Coatings.'' EPA is proposing to approve into the SIP the November 9, 2010, SIP revision as related to Rule .0966.

23. Rule 15A NCAC 02D .0967, ''Miscellaneous Metal and Plastic Parts Coatings''

In June 1978, EPA issued a CTG document to address the control of VOC emissions from surface coating of Miscellaneous Metal Parts and Products. On October 7, 2008 (73 FR 58481), EPA updated the 1978 CTG, as part of Group IV CTG, addressing the control of VOC emissions from surface coating of miscellaneous metal parts and products.

North Carolina originally adopted Rule 15A NCAC 02D .0934, ''Coating of Miscellaneous Metal Parts and Products'' in 1980, amended it and submitted it to EPA for approval into the federally-approved SIP. In a November 9, 2010, SIP revision North Carolina repealed Rule .0934, ''Coating of Miscellaneous Metal Parts and Products'' and replaced it with Rule .0967, ''Miscellaneous Metal and Plastic Parts Coatings''. North Carolina originally adopted Rule .0967 on September 1, 2010, and submitted it for EPA approval on November 9, 2010. The rule was adopted to replace Rule .0934 ''Coating of Miscellaneous Metal Parts and Products.'' EPA is proposing to approve into the SIP the November 9, 2010, SIP revision as it relates to Rule .0967.

24. Rule 15A NCAC 02D .0968, ''Automobile and Light Duty Truck Assembly Coatings''

In May 1977, EPA issued a CTG document (1977 CTG) for controlling VOC emissions from surface coating of automobiles and light-duty trucks. On October 7, 2008 (73 FR 58481), EPA updated the 1977 CTG, as part of Group IV CTG, addressing the control of VOC emissions from automobile and light-duty truck manufacturing.

North Carolina originally adopted Rule 15A NCAC 02D .0917, ''Automobile and Light Duty Truck Manufacturing'' in 1979, amended it and submitted it to EPA for approval into the federally-approved SIP. In a November 9, 2010, SIP revision North Carolina repealed Rule .0917, ''Automobile and Light Duty Truck Manufacturing'' and replaced it with Rule .0968, ''Automobile and Light Duty Truck Assembly Coatings.''

North Carolina originally adopted Rule .0968 on September 1, 2010, and submitted it for EPA approval on November 9, 2010. The rule was adopted to replace Rule .0917 ''Automobile and Light Duty Truck Manufacturing.'' EPA is proposing to approve into the SIP the November 9, 2010, SIP revision as it relates to Rule .0968.

b. General RACT Rules

Moderate and above ozone nonattainment areas are required to have regulations in place that require major VOC sources and NOx sources to meet RACT requirements. North Carolina was required to meet VOC major source RACT and NOx major source RACT for the Charlotte 1-hour ozone nonattainment area, which consisted of Mecklenburg and Gaston Counties. The bi-state Charlotte Area was designated as a moderate nonattainment area for the 1997 8-hour ozone standard on June 15, 2004. North Carolina was then required to meet major source VOC RACT and major source NOx RACT for the entire seven county 1997 8-hour nonattainment area. The following are RACT rules for the North Carolina portion of the bi-state Charlotte Area.

25. Rule 15A NCAC 02D .0901, ''Definitions''

North Carolina originally adopted this rule in 1979, amended it a number of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on July 21, 1994 (59 FR 37162). The

rule was amended numerous times after that and submitted to EPA for SIP approval on August 16, 1996. EPA approved these amendments into the federally-approved SIP on August 1, 1997, (62 FR 41277).

This rule was referenced in the appendix of the June 15, 2007, SIP revision but no rule changes were made at that time. Changes to this rule were state effective March 13, 2008, and submitted to EPA on November 19, 2008, for SIP approval. The rule was amended to cross reference the new Rule Section 15A NCAC 02D .2600. Additional changes to this rule were state effective January 1, 2009, and submitted to EPA on September 18, 2009, for SIP approval. The rule was amended to include the definition of Stage I vapor control. EPA is proposing to approve into the SIP the November 19, 2008 and September 18, 2009, SIP revision changes to this rule.

26. Rule 15A NCAC 02D .0902, ''Applicability''

North Carolina originally adopted this rule in 1979, amended it a number of times and submitted it to EPA for approval. The following table shows the dates it was submitted to EPA and approved into the federally-approved SIP.

Date State submitted to EPA	Date of EPA approval	**Federal Register** approval
November 8, 1984	December 19, 1986	51 FR 45468.
January 7, 1994 and August 16, 1996	August 1, 1997	62 FR 41277.
March 19, 1997	October 15, 1999	64 FR 55879.
July 28, 2000	August 27, 2001	66 FR 34117.

Rule .0902 has been revised and submitted to EPA in numerous SIP submissions that have not yet been approved. Changes to this rule were state effective August 1, 2004, and submitted to EPA on October 14, 2004. The rule was amended to specify applicability for the 15A NCAC 02D .0900 Section Rules. Changes to this rule were state effective March 1, 2007, and submitted to EPA on April 6, 2007. The rule was amended to make the .0900 Section rules applicable to major sources in the Area. Rule .0902 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. Changes to this rule were state effective July 1, 2007, and submitted to EPA on January 31, 2008. The rule was amended to cover facilities with the potential to emit between 50 and 100 tons VOC per year in the bi-State Charlotte Area and to describe additional VOC sources covered and actions to be taken if EPA reclassified the bi-State Charlotte Area to serious.[30] Changes to this rule were state effective January 1, 2009, and submitted to EPA on September 18, 2009. The rule was amended to remove a reference to Rule 15A NCAC 02D .0953 that has been repealed. Changes to this rule were state effective September 1, 2010, and submitted to EPA on November 9, 2010. The rule was amended to extend the work practice standards in 15A NCAC 02D .0958 to all sources of VOC in the state and to clarify that all areas that become subject to the VOC RACT rules shall continue to comply with those rules after the area is redesignated to attainment.

EPA is proposing conditional approval of the changes to this rule that were submitted to EPA on October 14, 2004, with the exception of the start-up, shutdown language as described in Section II. A. a. of this document and the revisions submitted, April 6, 2007, January 31, 2008, September 18, 2009 and November 9, 2010, on the condition that North Carolina will finalize their draft November 28, 2012, submittal, submit it to EPA and meet federal law.

27. Rule 15A NCAC 02D .0909, ''Compliance Schedules for Sources in Nonattainment Areas''

North Carolina originally adopted this rule in 1979, amended it and submitted it to EPA for approval on November 8, 1984. EPA approved it into the federally-approved SIP on December 19, 1986, (51 FR 45468). The rule was amended again and submitted to EPA for SIP approval on March 19, 1997. EPA approved these amendments into the federally-approved SIP on October 15, 1999, (64 FR 55879). The rule was amended again and submitted to EPA for SIP approval on July 28, 2000. EPA approved these amendments into the federally-approved SIP on August 27, 2001, (66 FR 34117).

Rule .0909 has been revised and submitted to EPA in numerous SIP submissions that have not yet been approved. Changes to this rule were state effective March 1, 2007, and submitted to EPA on April 6, 2007. The rule was amended to add a compliance schedule for nonattainment areas, distinguishing the compliance schedules for maintenance areas and new nonattainment areas. Rule .0909 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. Changes to this rule were state effective July 1, 2007, and submitted to EPA on January 31, 2008. The rule was amended to add VOC RACT compliance schedules if EPA had reclassified the bi-state Charlotte Area to serious.[31] Changes to this rule were state effective January 1, 2009, and submitted to EPA on September 18, 2009. The rule was amended to remove a reference to Rules .0953 and .0954 that have been repealed. Changes to this rule were state effective September 1, 2010, and submitted to EPA on November 9, 2010. The rule was amended to change cross references.

EPA is proposing conditional approval of the changes to this rule that were submitted to EPA on April 6, 2007, January 31, 2008, September 18, 2009 and November 9, 2010, on the condition that North Carolina will finalize their draft November 28, 2012, SIP revision, submit it to EPA and meet federal law.

28. Rule 15A NCAC 02D .0912, ''General Provisions on Test Methods and Procedures''

North Carolina originally adopted this rule in 1979, amended it and submitted it to EPA for approval on November 8, 1984. EPA approved it into the federally-approved SIP on December 19, 1986, (51 FR 45468). The rule was amended again and submitted to EPA for SIP approval on April 4, 2003. EPA approved these amendments into the federally-approved SIP on September 17, 2003, (68 FR 54362). Rule .0912 was referenced in the appendix of the June

[30] As provided for in the CAA, North Carolina was granted a 1 year extension of the attainment date (See 76 FR 31245, May 31, 2011), attained the standard prior to the extended attainment date, and was not reclassified to serious and continued to be a moderate area.

[31] As provided for in the CAA, on May 31, 2011, North Carolina was granted a 1 year extension of the attainment date (*See* 76 FR 31245), attained the standard prior to the extended attainment date, and was not reclassified to serious and continued to be a moderate area.

15, 2007, SIP revision but no rule change was made at that time.

Rule .0912 has been revised and submitted to EPA in a SIP submission that has not yet been approved. Changes to this rule were state effective March 13, 2008, and submitted to EPA on November 19, 2008. The rule was amended to add the cross-reference and remove verbal explanations of testing expectations and schedules that are transferred to the new rule Section 15A NCAC 02D .2600 as submitted on November 19, 2008. EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT, and EPA is proposing to approve the changes made to this rule in the November 19, 2008, SIP revision.

29. Rule 15A NCAC 02D .0913, ''Determination of Volatile Content of Surface Coatings'' Repealed

North Carolina originally adopted this rule in 1979, amended it and submitted it to EPA for approval on July 1, 1988. EPA approved it into the federally-approved SIP on January 16, 1990, (55 FR 1420). Rule .0913 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

Rule .0913 has been repealed and submitted to EPA in a SIP submission that has not yet been approved. This rule was repealed, state effective March 13, 2008, and submitted to EPA on November 19, 2008. The repealed rule was replaced with requirements in the new rule Section .2600 as submitted on November 19, 2008. EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT and EPA is proposing to approve the repeal of this rule in the November 19, 2008, SIP revision.

30. Rule 15A NCAC 02D .0914, ''Determination of VOC Emission Control System Efficiency'' Repealed

North Carolina originally adopted this rule in 1979, amended it and submitted it to EPA for approval on November 8, 1984. EPA approved it into the federally-approved SIP on December 19, 1986. *See* 51 FR 45468. It was amended again and submitted to EPA for approval on July 29, 1998. EPA approved it into the federally-approved SIP on November 10, 1999. *See* 64 FR 61213. Rule .0914 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

Rule .0914 was repealed and submitted to EPA in a SIP submission that has not yet been approved. This repealed rule became state effective March 13, 2008, and was submitted to EPA on November 19, 2008. The repealed rule was replaced with requirements in the new rule Section 15A NCAC 02D .2600 as submitted on November 19, 2008. EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT and EPA is proposing to approve the repeal of this rule in the November 19, 2008, SIP revision.

31. Rule 15A NCAC 02D .0939, ''Determination of Volatile Organic Compound Emissions (Repealed)''

North Carolina originally adopted this rule in 1980, amended it a number of times and submitted it to EPA for approval on July 1, 1988. EPA approved it into the federally-approved SIP on January 16, 1990, (55 FR 1420). Rule .0939 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

On March 13, 2008, North Carolina repealed this rule and submitted the repeal to EPA for approval on November 19, 2008. In that same submittal, North Carolina replaced Rule .0939 with Rule 15A NCAC 02D .2613, ''Volatile Organic Compound Testing Methods.'' EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT and the November 19, 2008, SIP revision repealing Rule .0939. EPA will also be taking action to propose approval of Rule .2613.

32. Rule 15A NCAC 02D .0940, ''Determination of Leak Tightness and Vapor Leaks (Repealed)''

North Carolina originally adopted this rule in 1980, amended it a number of times and submitted it to EPA for approval. The following Table shows the state submittals and corresponding EPA approvals:

Date State submitted to EPA	Date of EPA Approval	**Federal Register** approval
June 23, 1980	August 27, 1981	46 FR 43137.
December 17, 1984	December 19, 1986	51 FR 45468.
July 1, 1988	January 16, 1990	55 FR 1420.

Rule .0940 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. On March 13, 2008, North Carolina repealed this rule and submitted the repeal to EPA for approval on November 19, 2008. In that same submittal, North Carolina replaced Rule .0940 with Rule 15A NCAC 02D .2615, ''Determination of Leak Tightness and Vapor Leaks.'' EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT and the November 19, 2008, SIP revision repealing Rule .0940. EPA will also be taking action to propose approval of Rule .2615.

33. Rule 15A NCAC 02D .0941, ''Alternative Method for Leak Tightness (Repealed)''

North Carolina originally adopted this rule in 1980, amended it a number of times and submitted it to EPA for approval on April 17, 1990. EPA approved it into the federally-approved SIP on June 23, 1994 (59 FR 32362). Rule .0941 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

On March 13, 2008, North Carolina repealed this rule and submitted the repeal to EPA for approval on November 19, 2008. In that same submittal, North Carolina replaced Rule .0941 with Rule 15A NCAC 02D .2615. EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT and the November 19, 2008, SIP revision repealing Rule .0941. EPA will also be taking action to propose approval of Rule .2615.

34. Rule 15A NCAC 02D .0942, ''Determination of Solvent in Filter Waste (Repealed)''

North Carolina originally adopted this rule in 1980, amended it a number of times and submitted it to EPA for approval on July 23, 1990. EPA approved it into the federally-approved SIP on August 27, 1981. *See* 46 FR 43137. Rule .0942 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

On March 13, 2008, North Carolina repealed this rule and submitted the repeal to EPA for approval on November

19, 2008. In that same submittal, North Carolina replaced Rule .0942 with Rule 15A NCAC 02D .2613, ''Volatile Organic Compound Testing Methods.'' EPA is taking action to propose approval of the June 15, 2007, SIP revision as it relates to RACT and the November 19, 2008, SIP revision repealing Rule .0942. EPA will also be taking action to propose approval of Rule .2613.

35. Rule 15A NCAC 02D .0951, ''Miscellaneous Volatile Organic Compound Emissions''

North Carolina originally adopted Rule .0951 in 1994 and submitted it for EPA approval on January 7, 1994, and again on August 16, 1995. EPA approved these revisions on August 1, 1996. *See* 62 FR 41277. North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 28, 2000. EPA approved these amendments on June 27, 2001, (66 FR 34117). Rule .0951 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time.

Changes to this rule were state effective September 1, 2010, and submitted to EPA on November 9, 2010, for SIP approval. The rule was amended to change cross references to other Section 15A NCAC 02D .0900 rules. The Rule was amended again, including a name change to ''RACT for Sources of Volatile Organic 3 Compounds.'' This revision was submitted for EPA approval on November 28, 2012, for parallel processing. EPA is proposing to approve into the SIP the June 15, 2007, SIP revision as it relates to RACT, and proposing to conditionally approve the November 9, 2010, SIP revision into the SIP.

36. Rule 15A NCAC 02D .1402, ''Applicability''

North Carolina originally adopted Rule .1402 in 1995, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002 (67 FR 42519). North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002 (67 FR 78987).

Rule .1402 has been revised and submitted to EPA in numerous SIP submissions that have not yet been approved. Changes to this rule were state effective March 1, 2007, and submitted to EPA on April 6, 2007. The rule was amended to major sources in the Area. Rule .1402 was also referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. Changes to this rule were state effective July 1, 2007, and submitted to EPA on January 31, 2008. The rule was amended to address facilities with the potential to emit between 50 and 100 tons of NO_X per year and describe actions to be taken if EPA notifies the State that the bi-state Charlotte Area has failed to attain compliance with the ozone standard. Changes to this rule were state effective July 1, 2007, and submitted to EPA on November 19, 2008. The rule was amended to remove reference to repealed rules. Changes to this rule were state effective January 1, 2010, and submitted to EPA on February 3, 2010. The rule was amended to specify which parts of this section apply to sources covered under CAIR, to clarify RACT requirements in nonattainment areas and to correct cross-reference errors. EPA is proposing to approve into the SIP the version of Rule .1402, ''Applicability'' submitted on February 3, 2010, which incorporated all of the changes listed above.

37. Rule 15A NCAC 02D .1403, ''Compliance Schedules''

North Carolina originally adopted Rule .1403 in 1995, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002. *See* 67 FR 42519. North Carolina submitted amendments to EPA for approval into the federally- approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002 (67 FR 78987).

Changes to Rule .1403 became state effective on March 1, 2007, and were submitted to EPA for SIP approval on April 6, 2007. Specifically, this rule was amended to add a compliance schedule for nonattainment areas distinguishing the compliance schedules for maintenance areas and new nonattainment areas. Rule .1403 was also referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. Rule .1403 was amended again with changes state effective on July 1, 2007, and submitted to EPA for SIP approval on January 31, 2008. It was amended to add NO_X RACT compliance schedules for the bi-state Charlotte Area if the ozone nonattainment plan fails to attain compliance. EPA is proposing to approve into the SIP the version of Rule 15A NCAC 02D .1403, ''Compliance Schedules'' submitted on January 31, 2008, which incorporated all of the changes listed above.

38. Rule 15A NCAC 02D .1404, ''Recordkeeping: Reporting: Monitoring''

North Carolina originally adopted Rule .1404 in 1995, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002. *See* 67 FR 42519. North Carolina submitted amendments to EPA for approval into the federally- approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002 (67 FR 78987).

Changes to Rule .1404 became state effective on May 1, 2004, and were submitted to EPA for SIP approval on October 14, 2004. This rule was amended to clarify monitoring requirements. Rule .1404 was also referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. EPA is proposing to approve into the SIP the version of Rule 15A NCAC 02D .1404, ''Recordkeeping: Reporting: Monitoring'' submitted on October 14, 2004.

39. Rule 15A NCAC 02D .1407, ''Boilers and Indirect Process Heaters''

North Carolina originally adopted Rule 15A NCAC 02D .1407 in 1995, and then made some temporary amendments. Rule 15A NCAC 02D .1407 was also referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended the rule, state effective July 15, 2002, and submitted it for EPA approval on November 19, 2008. It was amended to account for changes in Rule .1402 Applicability. EPA has made the preliminary determination that this change is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as was submitted November 19, 2008.

40. Rule 15A NCAC 02D .1408, ''Stationary Combustion Turbines''

North Carolina originally adopted Rule .1408 in 1995, and then made some temporary amendments. Rule .1408 was also referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1408, these changes became state effective July 15, 2002, and submitted it for EPA approval on November 19, 2008. It was amended to account for changes in Rule .1402 Applicability. EPA has made the preliminary determination that this change is consistent with federal requirements, and thus EPA is proposing to approve the changes to this

rule as it was submitted November 19, 2008.

41. Rule 15A NCAC 02D .1409, ''Stationary Internal Combustion Turbines''

North Carolina originally adopted Rule .1409 in 1995 and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002. *See* 67 FR 42519. North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002. *See* 67 FR 78987.

Changes to Rule.1409 became state effective on May 1, 2004, and was submitted to EPA for approval on October 14, 2004. It was amended to clarify stationary internal combustion engine requirements. Rule .1409 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. Changes to Rule .1409 became state effective on March 13, 2008, and were submitted to EPA for SIP approval on November 19, 2008. Specifically, it was amended to remove reference to repealed rules. EPA has made the preliminary determination that this change is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

42. Rule 15A NCAC 02D .1410, ''Emissions Averaging''

North Carolina originally adopted Rule .1410 in 1995 and then made some temporary amendments. Rule .1410 was also referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1410, the changes became state effective on July 15, 2002, and March 13, 2008, and were submitted for EPA approval on November 19, 2008. Specifically, it was amended to remove references to repealed rules. EPA has made the preliminary determination that this change is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

43. Rule 15A NCAC 02D .1411, ''Seasonal Fuel Switching''

North Carolina originally adopted Rule .1411 in 1995, and then made some temporary amendments. Rule .1411 was also referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1411, it became state effective on July 15, 2002, and March 13, 2008, and was submitted for EPA approval on November 19, 2008. Specifically, it was amended to remove references to repealed rules. EPA has made the preliminary determination that this change is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

44. Rule 15A NCAC 02D .1412, ''Petition for Alternative Limitations''

North Carolina originally adopted Rule .1412 in 1995 and then made some temporary amendments. Rule .1412 was also referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1412, it became state effective July 15, 2002, and March 13, 2008, and was submitted for EPA approval on November 19, 2008. Specifically, it was amended to remove references to repealed rules. EPA has made the preliminary determination that this change is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

45. Rule 15A NCAC 02D .1415, ''Test Methods and Procedures''

North Carolina originally adopted Rule .1415 in 1995 and then made some temporary amendments. Rule .1415 was also referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1415, it became state effective on July 15, 2002, and March 13, 2008, and was submitted for EPA approval on November 19, 2008. Specifically, it was amended to cross-reference the new rules in Section 15A NCAC 02D .2600. EPA has made the preliminary determination that this change is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

46. Rule 15A NCAC 02D .1416, ''Emission Allocations for Utility Companies''

North Carolina originally adopted Rule .1416 in 2001, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002 (67 FR 42519). North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002. *See* 67 FR 78987.

North Carolina amended Rule .1416 and submitted these revisions to EPA for approval on October 14, 2004. Rule .1416 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1416, it became state effective on July 15, 2002, and June 1, 2004, and on March 13, 2008, North Carolina repealed the rule. North Carolina submitted this repeal for EPA approval on November 19, 2008. It was repealed because it was replaced by North Carolina's CAIR SIP revision which was approved by EPA. *See* 74 FR 62496 (November 30, 2009). EPA has made the preliminary determination that this change to North Carolina's SIP is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

47. Rule 15A NCAC 02D .1417, ''Emission Allocations for Large Combustion Sources''

North Carolina originally adopted Rule .1417 in 2001, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002 (67 FR 42519). North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002. *See* 67 FR 78987.

North Carolina amended Rule .1417 and submitted these revisions to EPA for approval on October 14, 2004. Rule .1417 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1417, it became state effective on July 15, 2002, and June 1, 2004, and on March 13, 2008, North Carolina repealed the rule. North Carolina submitted this repeal for EPA approval on November 19, 2008. It was repealed because it was replaced by North Carolina's CAIR SIP revision which was approved by EPA. *See* 74 FR 62496 (November 30, 2009). EPA has made the preliminary determination that this change to North Carolina's SIP is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

48. Rule 15A NCAC 02D .1418, ''New Electric Generating Units, Large Boilers, and Large Internal Combustion Engines''

North Carolina originally adopted Rule .1418 in 2001, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002. *See* 67 FR 42519. North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 15, 2002. EPA approved

these amendments on December 27, 2002. *See* 67 FR 78987.

Rule .1418 was amended to clarify offsets for new electric generating units, large boilers and large internal combustion engines and submitted these revisions to EPA for approval on October 14, 2004. Rule .1418 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1418, it became state effective on July 15, 2002, June 1, 2004, and March 13, 2008. North Carolina submitted it for EPA approval on November 19, 2008. It was amended to remove offset language that was replaced by North Carolina's CAIR SIP revision which was approved by EPA. *See* 74 FR 62496 (November 30, 2009). EPA has made the preliminary determination that this change to North Carolina's SIP is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

49. Rule 15A NCAC 02D .1419, ''Nitrogen Oxide Budget Trading Program''

North Carolina originally adopted Rule .1419 in 2001, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002. *See* 67 FR 42519. North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002. *See* 67 FR 78987.

North Carolina amended Rule .1419 and submitted these revisions to EPA for approval on October 14, 2004. Rule .1419 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1419, it became state effective on July 15, 2002 and June 1, 2004, and on March 13, 2008, North Carolina repealed the rule. North Carolina submitted this repeal for EPA approval on November 19, 2008. It was repealed because it was replaced by North Carolina's CAIR SIP revision which was approved by EPA. *See* 74 FR 62496 (November 30, 2009). EPA has made the preliminary determination that this change to North Carolina's SIP is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

50. Rule 15A NCAC 02D .1420, ''Periodic Review and Reallocations''

North Carolina originally adopted Rule .1420 in 2001, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002. *See* 67 FR 42519. North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002. *See* 67 FR 78987.

Rule .1420 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1420, it became state effective July 15, 2002, and on March 13, 2008, North Carolina repealed the rule. North Carolina submitted this repeal for EPA approval on November 19, 2008. It was repealed because it was replaced by North Carolina's CAIR SIP revision which was approved by EPA. *See* 74 FR 62496 (November 30, 2009). EPA has made the preliminary determination that this change to North Carolina's SIP is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

51. Rule 15A NCAC 02D .1421, ''Allocations for New Growth of Major Point Sources''

North Carolina originally adopted Rule .1421 in 2001, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002. *See* 67 FR 42519. North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002. *See* 67 FR 78987.

Rule .1421 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1421, it became state effective July 15, 2002, and on March 13, 2008, North Carolina repealed the rule. North Carolina submitted this repeal for EPA approval on November 19, 2008. It was repealed because it was replaced by North Carolina's CAIR SIP revision which was approved by EPA. *See* 74 FR 62496 (November 30, 2009). EPA has made the preliminary determination that this change to North Carolina's SIP is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

52. Rule 15A NCAC 02D .1422, ''Compliance Supplement Pool Credits''

North Carolina originally adopted Rule .1422 in 2001, and submitted it for EPA approval on November 18, 2001. EPA approved these changes on June 24, 2002. *See* 67 FR 42519. North Carolina submitted amendments to EPA for approval into the federally-approved SIP on July 15, 2002. EPA approved these amendments on December 27, 2002. *See* 67 FR 78987.

North Carolina amended Rule .1422 and submitted these revisions to EPA for approval on October 14, 2004. Rule 15A NCAC 02D .1422 was referenced in the appendix of the June 15, 2007, SIP revision but no rule change was made at that time. North Carolina amended Rule .1422, it became state effective July 15, 2002, and on March 13, 2008, North Carolina repealed the rule. North Carolina submitted this repeal for EPA approval on November 19, 2008. It was repealed because it was replaced by North Carolina's CAIR SIP revision which was approved by EPA. *See* 74 FR 62496 (November 30, 2009). EPA has made the preliminary determination that this change to North Carolina's SIP is consistent with federal requirements, and thus EPA is proposing to approve the changes to this rule as it was submitted November 19, 2008.

53. Rule 15A NCAC 02D .2601, ''Purpose and Scope''

North Carolina originally adopted Rule .2601 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to define the purpose of the application of Section 15A NCAC 02D .2600. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

54. Rule 15A NCAC 02D .2602, ''General Provisions on Test Methods''

North Carolina originally adopted Rule .2602 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to describe the general provisions to be used during source testing using the methods and procedures in Section 15A NCAC 02D .2600. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

55. Rule 15A NCAC 02D .2603, ''Testing Protocol''

North Carolina originally adopted Rule .2603 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to describe the construction of a source test protocol. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

56. Rule 15A NCAC 02D .2604, ''Number of Test Points''

North Carolina originally adopted Rule .2604 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to describe the source testing requiring the use of Method 1 of Appendix A of 40 CFR Part 60 during any source test in which velocity and volume flow rate measurements are required. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

57. Rule 15A NCAC 02D .2605, ''Velocity and Volume Flow Rate''

North Carolina originally adopted Rule .2605 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to explicitly require the use of Method 2 of Appendix A of 40 CFR Part 60 during any source test in which velocity and volume flow rate measurements are required. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

58. Rule 15A NCAC 02D .2606, ''Molecular Weight''

North Carolina originally adopted Rule .2606 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to explicitly require the use of Method 3 of Appendix A of 40 CFR Part 60 during any source test method requiring determination of the molecular weight of the gas being sampled by determining the fraction of carbon dioxide, oxygen, carbon monoxide, and nitrogen are required, with one exception to Method 3 provided. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

59. Rule 15A NCAC 02D .2607, ''Determination of Moisture Content''

North Carolina originally adopted Rule .2607 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to require the use of Method 4 of Appendix A of 40 CFR Part 60 during any test method requiring determination of gas moisture content. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

60. Rule 15A NCAC 02D .2608, ''Number of Runs and Compliance Determination''

North Carolina originally adopted Rule .2608 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to state the required number of testing runs required and possible reductions of required test runs under unavoidable and unforeseeable circumstances. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

61. Rule 15A NCAC 02D .2612, ''Nitrogen Oxide Testing Methods''

North Carolina originally adopted Rule .2612 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to use Method 7 or Method 7E of Appendix A of 40 CFR part 60 for combustion sources not required to use continuous emissions monitoring and Method 20 of Appendix A of 40 CFR part 60 for stationary gas turbines. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

62. Rule 15A NCAC 02D .2613, ''Volatile Organic Compound Testing Methods''

North Carolina originally adopted Rule .2613 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to require the use of Method 24 of Appendix A of 40 CFR Part 60 for printing inks and related coatings, a specified procedure to determine solvent emissions from solvent metal cleaning equipment, and the procedures set forth in 40 CFR 60.503 at bulk gasoline terminals. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

63. Rule 15A NCAC 02D .2614, ''Determination of VOC Emission Control System''

North Carolina originally adopted Rule .2614 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to require specific protocols and test methods to determine the collection or control efficiency of any device or system operated for the purpose of reducing volatile organic compound emissions. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

64. Rule 15A NCAC 02D .2615, ''Determination of Leak Tightness and Vapor Leaks''

North Carolina originally adopted Rule .2615 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to test for leaks from gasoline tank trucks and vapor collection systems and to use procedures described in Method 27 of Appendix A of 40 CFR part 60 to annually certify truck tanks. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

65. Rule 15A NCAC 02D .2621, ''Determination of Fuel Heat Content Using F-Factor''

North Carolina originally adopted Rule .2621 on March 13, 2008, and submitted it for EPA approval on November 19, 2008. It was adopted to determine rates for wood or fuel burning sources using the ''Oxygen Based F Factor Procedure'' described in Section 5 of Method 19 of Appendix A of 40 CFR Part 60 or other procedures described in Method 19. EPA has evaluated this rule and has made the preliminary determination that this rule is consistent with federal requirements. Therefore, EPA is proposing to approve this rule.

III. Effect of This Proposed Action

The effect of this proposed action is to approve or conditionally approve the aforementioned requirements for RACT and CTG source categories into in the North Carolina SIP for the State's portion of the bi-state Charlotte Area. Today, EPA is proposing to approve SIP revisions submitted on June 15, 2007, November 19, 2008, February 3, 2010, and April 6, 2010. Additionally, EPA is proposing to approve in part, and conditionally approve in part, North Carolina's SIP revisions submitted on October 14, 2004, April 6, 2007, January 31, 2008, September 18, 2009, and November 9, 2010. EPA is proposing to conditionally approve North Carolina's SIP as it relates to VOC RACT because these SIP revisions do not provide the appropriate applicability thresholds for certain CTG sources.

In a August 30, 2012, letter, North Carolina committed to provide a SIP revision to correct the applicability thresholds for these CTG sources. If North Carolina fails to submit the SIP revision by March 13, 2014, today's

conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal.

IV. Proposed Action

EPA is proposing to approve several SIP revisions submitted to EPA by the State of North Carolina, through NC DENR, to address the NO_X RACT requirements for the North Carolina portion of the bi-state Charlotte Area. Additionally, EPA is proposing to approve in part, and conditionally approve in part several SIP revisions to address the VOC RACT requirements and related CTG requirements. Specifically, North Carolina submitted SIP revisions on October 14, 2004, April 6, 2007, June 15, 2007, January 31, 2008, November 19, 2008, September 18, 2009, February 3, 2010, April 6, 2010, and November 9, 2010, to address NO_X RACT, VOC RACT and CTG requirements. Together, these SIP revisions establish the RACT requirements for the major sources located in the North Carolina portion of the bi-state Charlotte Area. In a separate rulemaking, EPA has already taken action on RACT and CTG requirements for the South Carolina portion of the bi-state Charlotte Area.

EPA has evaluated the proposed revisions to North Carolina's SIP, and has made the preliminary determination that they are consistent with statutory and regulatory requirements and EPA guidance except for the applicability for some CTG VOC sources. Consistent with section 110(k)(4) of the Act, EPA is relying upon a commitment by North Carolina to include appropriate applicability thresholds for VOC RACT for the all sources addressed by CTG in the Area as a basis for conditionally approving North Carolina's SIP revisions as they relate to VOC RACT.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposal action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination does not have substantial direct effects on an Indian Tribe. There are no Indian Tribes located within the North Carolina portion of the bi-state Charlotte nonattainment area.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 5, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–05838 Filed 3–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2012–0111; FRL–9785–9]

RIN 2025–AA35

Addition of ortho-Nitrotoluene; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to add *ortho*-nitrotoluene (*o*-nitrotoluene) to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990. *o*-Nitrotoluene has been classified by the National Toxicology Program in their 12th Report on Carcinogens as ''reasonably anticipated to be a human carcinogen.'' EPA believes that *o*-nitrotoluene meets the EPCRA section 313(d)(2)(B) criteria because it can reasonably be anticipated to cause cancer in humans. Based on a review of the available production and use information, *o*-nitrotoluene is expected to be manufactured, processed, or otherwise used in quantities that would exceed the EPCRA section 313 reporting thresholds.

DATES: Comments must be received on or before May 13, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2012–0111, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: oei.docket@epa.gov*
- *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–TRI–2012–

0111. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0743; fax number: 202–566–0677; email: *bushman.daniel@epa.gov,* for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424–9346 or (703) 412–9810 in Virginia and Alaska or toll free, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use *o*-nitrotoluene. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How should I submit CBI to the agency?

Do not submit CBI information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

II. Introduction

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use

listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the listing criteria in Section 313(d)(2) are met. The EPCRA section 313(d)(2) criteria are:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans–

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can be reasonably anticipated to cause, because of

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

EPA has published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. Background Information

A. What is the NTP and the report on Carcinogens?

The National Toxicology Program (NTP) is an interagency program within the Department of Health and Human Services (DHHS) headquartered at the National Institute of Environmental Health Sciences (NIEHS) of the National Institutes of Health (NIH). The mission of the NTP is to evaluate chemicals of public health concern by developing and applying tools of modern toxicology and molecular biology. The NTP program maintains an objective, science-based approach in dealing with critical issues in toxicology and is committed to using the best science available to prioritize, design, conduct, and interpret its studies. The mission of the NTP includes the evaluation of chemicals for their potential to cause cancer in humans.

As part of their cancer evaluation work, the NTP periodically publishes a Report on Carcinogens (RoC) document. The RoC was mandated by the U.S. Congress, as part of the Public Health Service Act (Section 301(b)(4), as amended). The NTP describes the RoC as an informational scientific and public health document that identifies and discusses agents, substances, mixtures, or exposure circumstances that may pose a hazard to human health by virtue of their carcinogenicity. The NTP RoC serves as a meaningful and useful compilation of data on (1) the carcinogenicity (ability to cause cancer), genotoxicity (ability to damage genes), and biologic mechanisms (modes of action in the body) of the RoC-listed substances in humans and/or in animals, (2) the potential for human exposure to these substances, and (3) the regulations and guidelines promulgated by Federal agencies to limit exposures to RoC-listed substances. The NTP RoC is published periodically, with the most recently published 12th RoC having been released on June 10, 2011. The 12th RoC contains the NTP cancer classifications from the most recent chemical evaluations as well as the classifications from previous versions of the RoC.

B. What are the NTP cancer classifications and criteria?

The NTP RoC classifies chemicals as either ''known to be a human carcinogen'' or ''reasonably anticipated to be a human carcinogen.'' The criteria that the NTP uses to list an agent, substance, mixture, or exposure circumstance under each classification in the RoC (Ref. 1) are as follows:

''*Known To Be Human Carcinogen:*

There is sufficient evidence of carcinogenicity from studies in humans*, which indicates a causal relationship between exposure to the agent, substance, or mixture, and human cancer.

Reasonably Anticipated To Be Human Carcinogen:

There is limited evidence of carcinogenicity from studies in humans*, which indicates that causal interpretation is credible, but that alternative explanations, such as chance, bias, or confounding factors, could not adequately be excluded,

or

there is sufficient evidence of carcinogenicity from studies in experimental animals, which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors (1) in multiple species or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site, or type of tumor, or age at onset,

or

there is less than sufficient evidence of carcinogenicity in humans or laboratory animals; however, the agent, substance, or mixture belongs to a well-defined, structurally related class of substances whose members are listed in a previous Report on Carcinogens as either known to be a human carcinogen or reasonably anticipated to be a human carcinogen, or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to, dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive sub-populations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals, but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

*This evidence can include traditional cancer epidemiology studies, data from clinical studies, and/or data derived from the study of tissues or cells from humans exposed to the substance

in question, which can be useful for evaluating whether a relevant cancer mechanism is operating in humans.''

The NTP classifications for the potential for a chemical to cause cancer are very similar to the EPCRA section 313(d)(2)(B) statutory criteria for listing a chemical on the list of toxic chemicals subject to reporting under EPCRA section 313: ''(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—(i) cancer * * *'' The specific data used by the NTP to classify a chemical as ''Known To Be Human Carcinogen'' or ''Reasonably Anticipated To Be Human Carcinogen'' are consistent with data used by EPA to evaluate chemicals for their potential to cause cancer and classify chemicals as either ''Carcinogenic to Humans'' or ''Likely to Be Carcinogenic to Humans'' (Ref. 2).

C. What is the review process for the RoC?

Specific details of the nomination and review process for the development of the 12th RoC are described in the NTP Report on Carcinogens Review Process section of the 12th RoC (Ref. 1). In general, the RoC review process includes evaluations by scientists from the NTP, other Federal health research and regulatory agencies (including EPA), and nongovernmental institutions. The RoC review process includes external peer review and several opportunities for public comment. For the 12th RoC, during the entire nomination, selection, and review process there were four opportunities for public comment. For each candidate substance, an expert panel was convened to peer review the NTP background document prepared for each candidate substance. The NTP also asked the expert panels to (1) apply the RoC listing criteria to the relevant scientific evidence and make a recommendation regarding the listing status for the candidate substance and (2) to provide the scientific justification for that recommendation. For the 12th RoC, the next step was a review by the Interagency Scientific Review Group (which included an EPA representative) followed by a review by the NIEHS/NTP Scientific Review Group. After these reviews, the NTP prepared a draft substance profile for each candidate substance which was peer reviewed by the NTP Board of Scientific Counselors which then prepared and submitted a peer review report to the NTP. The NTP then drafted the 12th RoC and submitted it to the NTP Director for review. The Director distributed the draft 12th RoC to the NTP Executive Committee for consultation, review, and comment. After approval of the draft 12th RoC by the NTP Director, the final draft of the 12th RoC was prepared and was submitted to the Secretary, DHHS, for review and approval. Once approved, the Secretary submitted the 12th RoC to the U.S. Congress as a final document. The 12th RoC was released to the public on June 10, 2011.

IV. EPA's review of the 12th RoC

A. How did EPA select the NTP RoC chemical being proposed for addition?

The most recent version of the NTP RoC that EPA previously reviewed for possible additions to the EPCRA section 313 list was the 11th RoC (April 6, 2010, 75 FR 17333). Each new version of the RoC adds newly classified chemicals to the existing list. EPA's present review of the 12th RoC identified four newly listed chemicals that are not on or covered by the EPCRA section list (aristolochic acids, captafol, o-nitrotoluene, and riddelliine). Of the four chemicals, only *o*-nitrotoluene is commercially produced and thus would be an appropriate candidate for listing under EPCRA section 313 since no reports would be expected for the other chemicals.

Section 313(d)(2) of EPCRA provides EPA the discretion to add chemicals to the TRI list when there is sufficient evidence to establish any of the listing criteria. EPA can add a chemical that meets one criterion regardless of its production volume or whether any reports would be filed. But as in past chemical reviews (e.g., January 12, 1994, 59 FR 1788), EPA adopted a production volume screen for the development of this proposed rule to make sure that reports would be expected to be submitted for the chemicals proposed to be listed. If a chemical that did not meet the production volume screen was listed, there would be an economic burden for firms that would have to determine that they did not exceed the reporting threshold. Yet, as no reports would be filed, there would be no information to the public on such a chemical. EPA feels it is appropriate at this time to focus on chemicals for which reports are likely to be filed.

EPA reviewed the NTP 12th RoC chemical profile and supporting materials for *o*-nitrotoluene (Ref. 3). Given the extensive scientific reviews conducted by the NTP for their RoC documents, EPA's review focused on ensuring that there were no inconsistencies with how the Agency would consider the available data. EPA's review of the *o*-nitrotoluene chemical profile and supporting material found no inconsistencies between how the data were interpreted by the NTP and how that same data would be interpreted under EPA's Guidelines for Carcinogen Risk Assessment (Ref. 2). Therefore, EPA agrees with the hazard conclusions of the NTP 12th RoC for *o*-nitrotoluene.

B. What technical data supports the NTP RoC classification and EPA's proposed addition of o-nitrotoluene to the EPCRA section 313 list?

This section presents the data that supported the NTP 12th RoC classification of *o*-nitrotoluene and why EPA believes the data support the addition of this chemical to the EPCRA section 313 list. The NTP chemical profile, the NTP chemical background document, and the references cited within the portion of the NTP 12th RoC chemical profile quoted here, are all included in the docket for this rulemaking. While they are contained in the docket and are part of the rulemaking record, the references within the quotation cited from the NTP 12th RoC profile document are not included in the list of references in Unit VI. of this **Federal Register** notice. The full citations for the references contained in the quotation can be found in the NTP 12th RoC profile document (Ref. 4).

1. o-Nitrotoluene (CAS No. 88–72–2) (Refs. NTP Profile/Background document (Refs. 4 and 5)). The NTP has classified *o*-nitrotoluene as ''reasonably anticipated to be a human carcinogen.'' The classification is based on sufficient evidence of carcinogenicity in experimental animals and supporting data on mechanisms of carcinogenesis. The NTP substance profile for o-nitrotoluene (Ref. 4) included the following summary information of the evidence of carcinogenicity:

''Carcinogenicity

o-Nitrotoluene is reasonably anticipated to be a human carcinogen based on sufficient evidence of carcinogenicity from studies in experimental animals and supporting data on mechanisms of carcinogenesis.

Cancer Studies in Experimental Animals

Oral exposure to *o*-nitrotoluene caused tumors at several different tissue sites in rats and mice and early onset of cancer in male rats. Malignant mesothelioma and mesothelial-cell hyperplasia of the tunica vaginalis of the epididymis were observed in male rats administered *o*-nitrotoluene in their feed for 13 weeks (NTP 1992). Bile-duct cancer (cholangiocarcinoma) was observed after 26 weeks, both in rats

exposed to *o*-nitrotoluene for 26 weeks and in rats exposed for 13 weeks and then observed for 13 more weeks without exposure (NTP 1996). *o*-Nitrotoluene caused cancer at several tissue sites in two-year chronic exposure studies of rats and mice of both sexes and in a study in which male rats were exposed to *o*-nitrotoluene for 13 weeks and evaluated at two years (NTP 2002). In rats, *o*-nitrotoluene caused (1) subcutaneous skin tumors and mammary-gland tumors (fibroadenoma) in both sexes, (2) malignant mesothelioma and benign or malignant tumors of the liver (hepatocellular adenoma or carcinoma or cholangiocarcinoma) and lung (alveolar/bronchiolar adenoma or carcinoma) in males, and (3) benign liver tumors (hepatocellular adenoma) in females. In mice, it caused malignant blood-vessel tumors (hemangiosarcoma) in both sexes, malignant tumors of the large intestine (cecal carcinoma) in males, and benign or malignant liver tumors (hepatocellular adenoma or carcinoma) in females (NTP 2002).

Studies on Mechanisms of Carcinogenesis

Following oral administration to rats and mice, *o*-nitrotoluene is absorbed into the blood and rapidly cleared; the serum half-life is 1.5 hours in rats (NTP 2002). In the rat liver, *o*-nitrotoluene is metabolized to *o*-nitrobenzyl alcohol and can follow several metabolic pathways: (1) glucuronidation to *o*-nitrobenzyl glucuronide, (2) sulfation and subsequent reaction with glutathione and acetylcysteine to *o*-nitrobenzyl sulfate, *S*-(o-nitrobenzyl)glutathione, and *S*-(*o*-nitrobenzyl)-*N*-acetylcysteine, or (3) metabolism to *o*-aminobenzyl alcohol followed by oxidation to *o*-aminobenzoic acid. The metabolites are eliminated primarily in the urine. The major metabolites are *o*-nitrobenzyl glucuronide and *o*-nitrobenzoic acid major metabolites in rats and mice and *o*-aminobenzyl alcohol and *S*-(*o*-nitrobenzyl)-*N*-acetylcysteine in rats. Female rats excrete less than half as much of the dose in the form of *o*-aminobenzyl alcohol, *o*-nitrobenzyl alcohol, or *S*-(*o*-nitrobenzyl)-*N*-acetylcysteine as male rats (NTP 2002). The glucuronidated form can also be excreted in the bile; when the glucuronidated form in the bile is excreted into the small intestine, intestinal bacteria can deconjugate it and reduce the nitro group to an amino group, forming aminobenzyl alcohol. Aminobenzyl alcohol can be reabsorbed from the intestine and further metabolized by the liver to reactive compounds (carbonium and nitrenium ions) that can covalently bind to DNA or to proteins (Chism and Rickert 1985, NTP 2002, 2008). Thus, microbial metabolism in the intestine is an important step in the carcinogenicity of *o*-nitrotoluene. However, neither *o*-aminobenzyl alcohol nor its metabolites have been detected in mouse urine after exposure to *o*-nitrotoluene (NTP 2002); therefore, other unidentified biochemical pathways leading to tumor formation most likely are involved.

o-Nitrotoluene did not cause mutations in bacteria. In studies of its ability to cause genetic damage in cultured mammalian cells, the results were mixed. *o*-Nitrotoluene caused (1) sister chromatid exchange in Chinese hamster ovary (CHO) cells, (2) chromosomal aberrations in Chinese hamster lung (CHL) cells and human peripheral lymphocytes but not in CHO cells, (3) micronucleus formation in CHL cells but not in CHO–K1 cells, and (4) DNA damage in L5178Y mouse lymphoma cells (NTP 2008). It did not induce DNA repair in rat or human hepatocytes (NTP 2008). In rats and mice exposed *in vivo, o*-nitrotoluene caused a slight increase in micronucleus formation in peripheral normochromatic erythrocytes in male mice at a high dose level; this finding was not considered conclusive. *o*-Nitrotoluene did not induce micronucleus formation in peripheral normochromatic erythrocytes in female mice or in polychromatic erythrocytes in the bone marrow of male rats or mice (NTP 2002). Following *in vivo* exposure of rats to *o*-nitrotoluene, DNA repair was increased in liver cells isolated from males, but not from females or germ-free males. These results, together with *o*-nitrotoluene's inability to induce DNA repair in hepatocytes *in vitro,* suggest that activation of *o*-nitrotoluene to become genotoxic is sex-specific and depends on both mammalian metabolism and metabolism by intestinal bacteria (Doolittle *et al.* 1983). However, *o*-nitrotoluene also caused tumors in other tissues in rats and mice of both sexes, suggesting that other activation mechanisms exist.

In rats exposed to *o*-nitrotoluene *in vivo,* DNA adducts were detected in the liver of males but not females (NTP 2008). Formation of DNA adducts was consistent with the reaction of intermediate compounds derived from *o*-aminobenzyl alcohol with guanine or adenine bases (Jones *et al.* 2003). The pattern of mutations in oncogenes from *o*-nitrotoluene-induced tumors was also consistent with guanine adduct formation: the majority of *p53* mutations in hemangiosarcomas were G:C to A:T transitions, and almost all the K-*ras* mutations in cecal carcinomas were G:C to T:A transversions (Hong *et al.* 2003, Sills *et al.* 2004). Mutations in the *p53,* β-*catenin,* and K-*ras* genes also were found in hemangiosarcomas from mice exposed to *o*-nitrotoluene, but not in spontaneously occurring hemangiosarcomas from unexposed mice (Hong *et al.* 2003).

In factory workers exposed to *o*-nitrotoluene, *o*-nitrotoluene–hemoglobin adducts were detected in the blood (Jones *et al.* 2005a), and *o*-nitrobenzoic acid and *o*-nitrobenzyl alcohol were detected in the urine (Jones *et al.* 2005b), providing evidence that human exposure to *o*-nitrotoluene results in production of a reactive metabolite(s). In addition, adducts between hemoglobin and 2-methylaniline (a metabolite of *o*-nitrotoluene) were identified in both exposed workers and exposed rats, and the level of 2-methylaniline–hemoglobin adducts in the blood of rats was proportional to the level of 2-methylaniline–DNA adducts in the livers of rats (Jones and Sabbioni 2003, Jones *et al.* 2003).

Cancer Studies in Humans

The data available from epidemiological studies are inadequate to evaluate the relationship between human cancer and exposure specifically to *o*-nitrotoluene. One cohort study of workers involved in the manufacture of magenta dye mentioned exposure of workers to *o*-nitrotoluene as part of the manufacturing process. A large excess of bladder cancer was reported; however, the workers were also exposed to other chemicals—*o*-toluidine (2-methylaniline) and 4,4′-methylenebis(2-methylaniline)—that are suspected of causing bladder cancer (Rubino *et al.* 1982). Two other studies of magenta manufacturing workers also reported an excess of bladder cancer, but did not report whether the workers were exposed to *o*-nitrotoluene (Case and Pearson 1954, Vineis and Magnani 1985).''

EPA has reviewed the NTP assessment for *o*-nitrotoluene and agrees that *o*-nitrotoluene can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing *o*-nitrotoluene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

V. Rationale for listing

The NTP RoC document undergoes significant scientific review and public comment. The NTP review mirrors the

review EPA has historically done to assess chemicals for listing under EPCRA section 313 on the basis of carcinogenicity. The conclusions regarding the potential for chemicals in the NTP RoC to cause cancer in humans are based on established sound scientific principles. EPA believes that the NTP RoC is an excellent and reliable source of information on the potential for chemicals covered in the NTP RoC to cause cancer in humans (see Unit III). Based on EPA's review of the data contained in the 12th NTP RoC, EPA has determined that *o*-nitrotoluene can reasonably be anticipated to cause cancer (Ref. 3). Therefore, EPA believes that the evidence is sufficient for listing *o*-nitrotoluene on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data presented in the 12th RoC.

EPA considers chemicals that can reasonably be anticipated to cause cancer to have moderately high to high chronic toxicity. EPA does not believe that it is appropriate to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical can be added for chronic effects pursuant to EPCRA section 313(d)(2)(B) (*see* 59 FR 61440–61442). Therefore, in accordance with EPA's standard policy on the use of exposure assessments (59 FR 61432), EPA does not believe that an exposure assessment is necessary or appropriate for determining whether *o*-nitrotoluene meets the criteria of EPCRA section 313(d)(2)(B).

VI. References

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2012–0111. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

1. NTP, 2011. National Toxicology Program. Report on Carcinogens, Twelfth Edition. Released June 10, 2011. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

2. USEPA. Guidelines for Carcinogen Risk Assessment. Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC, March 2005.

3. USEPA, OEI. Memorandum from Martin Gehlhaus, Toxicologist, Analytical Support Branch to Larry Reisman, Chief, Analytical Support Branch. June 30, 2011. Subject: Review of National Toxicology Program (NTP) Cancer Classification Data for o-nitrotoluene.

4. NTP, 2011. National Toxicology Program. 12th Report on Carcinogens—o-Nitrotoluene Substance Profile. Released June 10, 2011. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

5. NTP, 2008. Report on Carcinogens Background Document for o-Nitrotoluene. June 20, 2008. U.S. Department of Health and Human Services, Public Health Services, National Toxicology Program, Research Triangle Park, NC 27709.

6. USEPA, OEI. Economic Analysis of the Proposed Rule to add *ortho*-Nitrotoluene to the EPCRA Section 313 List of Toxic Chemicals. February 9, 2012.

VII. What are the Statutory and Executive Order reviews associated with this action?

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et. seq. Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use either the EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or the EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 42 U.S.C. 11042: 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025–0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 relevant to EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

For the 17 Form Rs and 5 Form As expected to be filed, EPA estimates the industry reporting and recordkeeping burden for collecting this information to average, in the first year, $76,143 (based on 1,506 total burden hours). In subsequent years, the burden for collecting this information is estimated to average $36,252 (based on 717 total burden hours). These estimates include the time needed to become familiar with the requirement (first year only); review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection information; and transmit or otherwise disclose the information. The actual burden on any facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility. Upon promulgation of a final rule, the Agency may determine that the existing burden estimates in the ICRs need to be amended in order to account for an increase in burden associated with the final action. If so, the Agency will submit an information collection worksheet (ICW) to OMB requesting that the total burden in each ICR be amended, as appropriate.

The Agency would appreciate any comments or information that could be used 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 reasonableness of the Agency's estimate of the burden of the propose 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, 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. Please submit your comments within 90 days as specified at the beginning of this proposal. Copies of the existing ICRs may be obtained from Rick Westlund, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave. NW., Washington, DC 20460 or by calling (202) 566–1672.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A business that is classified as a ''small business'' by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Of the 22 entities estimated to be impacted by this proposed rule, 6 are small businesses. Of the affected small businesses, all 6 have cost-to-revenue impacts of less than 1% in both the first and subsequent years of the rulemaking. No small businesses are projected to have a cost impact of the first year, of the 1% or greater. In 6 estimated cost impacts, there is a maximum impact of 0.204%. Facilities eligible to use Form A (those meeting the appropriate activity threshold which have 500 pounds per year or less of reportable amounts of the chemical) will have a lower burden. No small governments or small organizations are expected to be affected by this action. Thus this rule is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document (Ref. 6). We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA's economic analysis indicates that the total cost of this rule is estimated to be $76,143 in the first year of reporting. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It 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, as specified in Executive Order 13132. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian Tribal Governments, EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore,

EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule adds an additional chemical to the EPCRA section 313 reporting requirements. By adding a chemical to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the proposed rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: March 5, 2013.

Bob Perciasepe,

Acting Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. Section 372.65 is amended by adding in the table of paragraph (a) ''o-Nitrotoluene'' in alphabetical order and adding in the table of paragraph (b) ''00088–72–2'' in numerical order to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
* * * * *	*	*
o-Nitrotoluene	00088–72–2	1/14
* * * * *	*	*

(b) * * *

CAS No.	Chemical name	Effective date
* * * * *	*	*
00088–72–2	o-Nitrotoluene	1/14
* * * * *	*	*

[FR Doc. 2013–05812 Filed 3–12–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2013–0030]

RIN 2127–AL24

Federal Motor Vehicle Safety Standards; Tire Selection and Rims

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 110 to make it clear that special trailer (ST) tires are permitted to be installed on new trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 lbs.) or less. It also proposes to exclude these trailers from a vehicle testing requirement that a tire must be retained on its rim when subjected to a sudden loss of tire pressure when brought to a controlled stop from 97 km/h (60 mph). After careful review, the agency believes that these two revisions are appropriate and would not result in any degradation of motor vehicle safety.

DATES: Submit comments on or before May 13, 2013.

ADDRESSES: You may submit comments electronically to the docket identified in the heading of this document by visiting the following Web site:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between

9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251

Regardless of how you submit your comments, you should mention the docket number identified in the heading of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact George Soodoo, Office of Crash Avoidance Standards, by telephone at (202) 366–4931, and by fax at (202) 366–7002. For legal issues, you may contact David Jasinski, Office of the Chief Counsel, by telephone at (202) 366–2992, and by fax at (202) 366–3820. You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On June 26, 2003, the agency published a final rule amending several Federal Motor Vehicle Safety Standards (FMVSSs) related to tires and rims.[1] That rulemaking was completed as part of a comprehensive upgrade of existing safety standards and the establishment of new safety standards to improve tire safety, as required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. That final rule included extensive revisions to the tire standards and to the rim and labeling requirements for motor vehicles.

That final rule expanded the applicability of FMVSS No. 110 to include all motor vehicles with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less, except for motorcycles. Prior to the enactment of the TREAD Act, FMVSS No. 110 only applied to passenger cars and to non-pneumatic spare tire assemblies for use on passenger cars. In an effort to coordinate the upgraded tire standard, intended to apply to all vehicles with a GVWR of 4,536 kg (10,000 pounds) or less with the standards used on tires for vehicles with a GVWR of 4,536 kg (10,000 pounds) or less, the language in FMVSS No. 110 was amended to require the use of tires meeting the new FMVSS No. 139, New pneumatic radial tires for light vehicles. The only exception provided in FMVSS No. 110 was for the use of spare tire assemblies with pneumatic spare tires meeting the requirements of FMVSS No. 109 or non-pneumatic spare tire assemblies meeting the requirements of FMVSS No. 129.

With the expansion of FMVSS No. 110 to include all motor vehicles with a GVWR of 4,536 kg (10,000 pounds) or less, the performance tests and criteria within the standard became applicable to all light vehicles, including light trucks, multipurpose passenger vehicles, buses, and trailers that had previously been subject to the requirements of FMVSS No. 120. Among the performance requirements in FMVSS No. 110 is a rim retention requirement compliance with which is assessed using a rapid tire deflation test. This requirement was not previously included in FMVSS No. 120 and, therefore, was not applicable to light trucks, multipurpose passenger vehicles, buses, and trailers. The effective date for these requirements was September 1, 2007, which provided approximately four years of lead time from publication of the final rule.[2]

The agency has been made aware, through communications from the Recreational Vehicle Industry Association (RVIA), of two concerns the trailer manufacturing industry has with FMVSS No. 110. First, RVIA and its members believe, from a literal reading of S4.1 of FMVSS No. 110, that special trailer (ST) tires and tires with rim diameter codes of 12 or below cannot be equipped on new trailers that are under 4,536 kg (10,000 pounds) or less because that section only allows for FMVSS No. 139-compliant tires to be equipped on trailers. Second, RVIA and its members questioned the need for the rim retention requirement for trailers in S4.4.1(b) and whether the dynamic rapid tire deflation test specified in that section could be conducted on trailers. Although no petition for rulemaking has been received related to these issues, the agency has, on its own initiative, reviewed these concerns and is proposing amendments to FMVSS No. 110 to respond to them. The two issues are addressed separately in more detail below.

II. Use of ST Tires on Trailers With a GVWR of 4,536 kg (10,000 Pounds) or Less

A literal reading of S4.1 of FMVSS No. 110 suggests that all light vehicles (those with GVWR or 4,536 kg (10,000 pounds) or less) would be required to be equipped with FMVSS No 139-compliant tires, with an exception only for T-type or non-pneumatic spare tire assemblies on passenger cars. Prior to the 1997 effective date of the amendments to FMVSS No. 110, trailers were subject to FMVSS No. 120, which then allowed for trailers to be equipped with ST tires and tires with rim diameter codes of 12 or less that comply with FMVSS No. 109.[3]

NHTSA has reexamined S4.1 and has tentatively concluded that an amendment is appropriate to clarify what appears to be an unnecessary and unintentional restriction on the types of tires that can be used on light trailers. A review of the rulemaking record supporting the June 2003 final rule does not reveal intent to restrict the types of tires that can be used on trailers. Rather, it appears that, in rewriting FMVSS No. 110 to apply to all light vehicles and require that light vehicles be equipped with FMVSS No. 139-compliant tires, the agency inadvertently omitted language that would allow trailers to continue to be equipped with FMVSS No. 109-compliant ST tires or 12 or lower rim diameter code tires.

Thus, NHTSA proposes to revise S4.1 to require that, subject to enumerated exceptions, all light vehicles be equipped with FMVSS No. 139-compliant tires. For passenger cars, T-type temporary spare tire assemblies and non-pneumatic spare tire assemblies that comply with FMVSS No. 109 and FMVSS No. 129, respectively, would continue to be allowed. Additionally, the agency is proposing to add a new exception allowing trailers to be equipped with ST tires or tires with a rim diameter code of 12 or below that comply with FMVSS No. 109.

We believe that expressly allowing the expanded use of trailer tires

[1] 68 FR 38116.

[2] See 71 FR 877 (Jan. 6, 2006).

[3] FMVSS No. 120 continues to allow trailers with a GVWR of greater than 4,536 kg (10,000 pounds) to be equipped with ST tires and tires with a rim diameter code of 12 or less.

consistent with these proposed amendments will not result in degradation of safety. The agency has reviewed NHTSA crash databases such as the Fatality Analysis Reporting System and the National Automotive Sampling System General Estimates System. However, those databases do not contain sufficient detail with respect to the coding of crashing to identify relevant crashes.

The agency has also reviewed consumer complaints made to NHTSA's Office of Defects Investigations, based on submissions of Vehicle Owner Questionnaires (VOQs) to identify safety problems related to tires. A search of that database in June 2012 revealed 963 complaints containing both the words ''tire'' and ''trailer.'' A review of the narrative of each complaint revealed that 942 of the VOQs reported tire issues on the towing vehicle, 10 VOQs involved tire issues on the trailer, and 11 VOQs were not sufficiently specific to determine if the tire issue was on the towing or towed vehicle. Nothing in the VOQ data indicated any increased safety risk associated with the use of ST tires or tires with rim diameter codes of 12 or less compared to any other type of tire. Furthermore, ST tires and tires with rim diameter codes 12 or less were expressly allowed to be used on light trailers prior to 2007 and the agency did not note any risk related to those tires in the rulemaking proceeding leading to the June 2003 final rule.

The agency seeks comment on this proposal. The agency also seeks comment on the tentative conclusion that adopting this proposed amendment would not result in any degradation of safety.

III. Rim Retention Requirement for Trailers

The June 2003 final rule extended the applicability of FMVSS No. 110 to all light vehicles except motorcycles. Prior to the 2007 effective date of that rule, the rim retention requirement was applicable only to passenger cars. With respect to this requirement, the agency stated the following in the June 2003 final rule:

> The agency has also decided to extend S4.4.1(b) of FMVSS No. 10 to light trucks and vans for the first time. S4.4.1(b) requires that each rim retain a deflated tire in the event of a rapid loss of inflation pressure from a vehicle speed of 97 km/h until the vehicle is stopped with a controlled braking application. No commenter responded to this issue.[4]

Although the agency only expressly stated an intent to extend the applicability of the rim retention requirement to light trucks and vans, there was no limitation in the regulatory text that excluded trailers or any other vehicle type subject to FMVSS No. 110 from this requirement. The extension of the applicability of this requirement to trailers resulted in the implementation of the first on-road compliance test that NHTSA could conduct on light trailers.

The rapid deflation test NHTSA conducts to determine compliance with the rim retention requirement provides that the vehicle travel in a straight line at a speed of 97 km/h (60 mph). A trailer, by its nature, is not self-propelled. Thus, to conduct the test, NHTSA would need to attach the trailer to a powered vehicle. However, neither the text of S4.4.1(b), nor NHTSA's compliance test procedure contemplate the use of a towing vehicle. Without such specificity, light trailer manufacturers cannot know how NHTSA would perform compliance testing of the rim retention requirement on trailers. Consequently, light trailer manufacturers are responsible for certifying that their trailers comply with the rim retention requirement in any towing-towed vehicle configuration, which creates testing issues not considered by the agency.

To determine if a safety problem exists, the agency investigated its crash data. As discussed in the prior section, NHTSA's crash databases were not sufficiently detailed to identify relevant crashes.

However, the agency has reviewed the 10 VOQs identified in the prior section related to tire issues on a trailer. One complaint involved a truck towing another truck. This case was not considered relevant because the towed vehicle was not a trailer. Nine cases reported tire failure (either blowout or tread separation) of one or more trailer tires. Four cases resulted in trailer rollover, but none reported rollover of the towing vehicle. Seven cases reported property damage to the trailer or the towing vehicle. In one case, another vehicle was struck by separated trailer tire tread. There were no reported injuries or fatalities in any of these nine cases, and it does not appear that any of these cases would have been addressed by the rim retention requirement.

For example, one case involving trailer rollover reported that the right trailer tire rolled off the bead on a curved section of roadway. The owner of the unspecified towing vehicle stated that the trailer was rental equipment. The police accident report indicated that the tires were underrated for the vehicle at the time of the crash (the trailer GVWR was 3,825 pounds and the two tires had a combined load carrying capacity of 3,250 pounds). However, there was insufficient information to confirm that the tires could not carry the load on the axle because there was no information on how much weight was loaded on the trailer's axle and whether the towing vehicle was carrying any of the trailer's weight.

Based on the foregoing information, the agency could not identify a current safety problem related to a trailer rim's ability to retain a tire in the event of rapid deflation. Over a 15-year period of consumer complaints, we found only nine complaints related to trailer tires, a rate of less than one complaint per year, and few, if any, of the complaints appear to be related to the rim retention requirement. Thus, we tentatively conclude that there is no continued safety need justifying the requirement that trailers comply with the rim retention requirement in S4.4.1(b) of FMVSS No. 110. We do not believe that excluding trailers from this requirement would have any measurable effect on the safety of light trailers.

We welcome comments on our tentative conclusion that there remains no continued safety need for trailers to comply with the rim retention requirement in S4.4.1(b) of FMVSS No. 110.[5]

IV. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments electronically to the docket following

[4] 68 FR 38142.

[5] We are not proposing to exclude trailers from the requirement in S4.4.1(a) that rims be constructed to the dimensions of a rim that is listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S4 of § 571.139. Although ST tires and tires with rim diameter codes of 12 or less are subject to the requirements of FMVSS No. 109 and not FMVSS No. 139, we are not proposing to refer to FMVSS No. 109 for rim matching requirements for ST and 12 or less rim diameter tires. On January 17, 2013, the agency published an amendment to FMVSS No. 109 that, among other things, updated the listing of industry tire and rim standards in FMVSS No. 109 to match those specified in S4 of FMVSS No. 139. See 78 FR 3843.

the steps outlined under **ADDRESSES**. You may also submit two copies of your comments, including the attachments, by mail to Docket Management at the beginning of this document, under **ADDRESSES**.

How can I be sure that my comments were received?

If you wish to be notified upon receipt of your mailed comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel (NCC–110), 1200 New Jersey Avenue SE., Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments received after the specified comment closing date. If we receive a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov* and follow the on-line instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

You may also see the comments at the address and times given near the beginning of this document under **ADDRESSES**.

V. Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined not to be significant under the Department's regulatory policies and procedures.

This NPRM would not impose costs upon manufacturers. It removes the rim retention requirement for light trailers. This NPRM might result in cost savings to manufacturers associated with the certification of compliance with the rim retention requirement. However, we are unable to quantify any such cost savings. This NPRM would not have any impact on safety.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this NPRM under the Regulatory Flexibility Act. I certify that this NPRM will not have a significant economic impact on a substantial number of small entities. This proposed rule would directly impact manufacturers of trailers with a GVWR of 4,536 kg (10,000 pounds) or less. Although we believe many manufacturers affected by this proposal are considered small businesses, we do not believe this NPRM will have a significant economic impact on those manufacturers. This NPRM would not impose any costs upon manufacturers and may result in cost savings. This NPRM would relieve light trailer manufacturers of the burden, and the associated costs, associated with the rim retention requirement.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would 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.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle

equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

D. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

E. Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This notice is part of a rulemaking that is not expected to have a disproportionate health or safety impact on children. Consequently, no further analysis is required under Executive Order 13045.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is not any information collection requirement associated with this NPRM.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this NPRM.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the

least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This NPRM would not result in any expenditure by State, local, or tribal governments or the private sector of more than $100 million, adjusted for inflation.

I. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

K. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Privacy Act

Anyone is able to search the electronic form of all 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Parts 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend section 571.110 by revising S4.1 and S4.4.1(b) to read as follows:

§ 571.110 Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.

* * * * *

S4.1 *General* (a) Subject to the exceptions set forth in S4.1(b), vehicles shall be equipped with tires that meet the requirements of § 571.139, New pneumatic tires for light vehicles.

(b) Notwithstanding the requirement in S4.1(a),

(1) Passenger cars may be equipped with pneumatic T-type temporary spare tire assemblies that meet the requirements of § 571.109, New pneumatic and certain specialty tires, or non-pneumatic spare tire assemblies that meet the requirements of § 571.129, New non-pneumatic tires for passenger cars, and S6 and S8 of this standard. Passenger cars equipped with a non-pneumatic spare tire assembly shall meet the requirements of S4.3(e), S5, and S7 of this standard.

(2) Trailers may be equipped with ST tires or tires with a rim diameter code of 12 or below that meet the requirements of § 571.109, New pneumatic and certain specialty tires.

* * * * *

S4.4.1 * * *

(b) Except for trailers, in the event of rapid loss of inflation pressure with the vehicle traveling in a straight line at a speed of 97 kilometers per hour, retain the deflated tire until the vehicle can be stopped with a controlled braking application

* * * * *

Issued on: March 4, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–05761 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 771

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–2012–2013]

FHWA RIN 2125–AF48
FTA RIN 2132–AB05

Environmental Impact and Related Procedures

Correction

In proposed rule document 2013–4678 beginning on page 13609 in the issue of Thursday, February 28, 2013, make the following correction:

On page 13609, in the first column, the docket number should read as set forth above.

[FR Doc. C1–2013–04678 Filed 3–12–13; 8:45 am]

BILLING CODE 1501–05–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2012–0108; FWS–R6–ES–2011–0111; 4500030113; 4500030114]

RIN 1018–AZ20; RIN 1018–AX71

Endangered and Threatened Wildlife and Plants; Endangered Status and Critical Habitat Designation for Gunnison Sage-Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are extending the public comment period on two proposed rules: to list the Gunnison sage-grouse (*Centrocercus minimus*) as endangered and to propose critical habitat for the Gunnison sage-grouse under the Endangered Species Act of 1973, as amended (Act). Both proposed rules were published in the **Federal Register** on January 11, 2013. We are extending the comment period to allow

the public an adequate opportunity to review and comment on the proposed rules. Comments already submitted need not be resubmitted, as they will be fully considered in preparation of the final rules, which we intend to issue by the end of Fiscal Year 2013 (September 30, 2013) as required by a court-approved settlement agreement.

DATES: The public comment period on the proposed rule to list the Gunnison sage-grouse as endangered and the proposed rule to designate critical habitat published in the **Federal Register** on January 11, 2013 (78 FR 2486 and 2540) is extended to April 2, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the appropriate Docket No.: FWS–R6–ES–2012–0108 for the proposed endangered status for Gunnison sage-grouse; or FWS–R6–ES–2011–0111 for the proposed designation of critical habitat for Gunnison sage-grouse. Then, in the Search panel on the left side of the screen, under the Document Type heading, check on the Proposed Rules link to locate the proposed rule. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy: For the proposed endangered status for Gunnison sage-grouse,* submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2012–0108; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

For the proposed designation of critical habitat for Gunnison sage-grouse, submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2011–0111; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more details).

FOR FURTHER INFORMATION CONTACT: Patty Gelatt, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946; telephone 970–243–2778; facsimile 970–245–6933. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2013, we published in the **Federal Register** a proposed rule to list the Gunnison sage-grouse as endangered (78 FR 2486), and a proposed rule to designate approximately 1.7 million acres of critical habitat for Gunnison sage-grouse (78 FR 2540) under the Endangered Species Act of 1973, as amended. Each proposed rule has a 60-day comment period, ending March 12, 2013. We received several requests from the public to extend the comment period for these proposals. To ensure the public has an adequate opportunity to review and comment on these proposed rules, we are extending the comment period to April 2, 2013 (see **DATES**). We intend to issue final determinations on each of these rules by September 30, 2013.

Information Requested

We will accept written comments and information during this extended comment period and will consider information and recommendations from all interested parties. If you previously submitted comments or information on the proposed rules, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determinations. We intend that any final action resulting from these proposals be based on the best scientific and commercial data available and be as accurate and as effective as possible.

We request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning these proposed rules. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(7) Specific information on:

(a) The amount and distribution of Gunnison sage-grouse habitat;

(b) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why; and

(f) What areas not occupied at the time of listing (or the present time) are essential for the conservation of the species and why.

(8) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat.

(9) Information on the projected and reasonably likely impacts of climate change on the Gunnison sage-grouse and proposed critical habitat.

(10) With respect to the proposed designation of critical habitat, any foreseeable economic, national security, or other relevant impacts that may result from designating any areas that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and particularly whether the benefits of potentially excluding any specific area outweigh the benefits of including that area as set out in section 4(b)(2) of the Act. For instance, should the proposed designation exclude properties currently enrolled in the Gunnison sage-grouse Candidate Conservation Agreement with Assurances, properties under conservation easement, or properties held by conservation organizations, and why?

(12) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(13) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section above. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rules on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0108 for the proposed endangered status for Gunnison sage-grouse; or Docket No. FWS–R6–ES–2011–0111 for the proposed designation of critical habitat for Gunnison sage-grouse. Copies of the proposed rules are also available at *http://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse/.*

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 7, 2013.

Rowan W. Gould,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–05855 Filed 3–12–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 78, No. 49

Wednesday, March 13, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forestry Research Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to re-establish an advisory council and call for nominations

SUMMARY: The Department of Agriculture intends to re-establish the Forestry Research Advisory Council (Council). In accordance with provisions of Section 1441(c) of the Agriculture and Food Act of 1981 (Pub. L. 97–98), and the Federal Advisory Committee Act (FACA), (5 U.S.C. App. 2), the Council is being re-established to provide advice to the Secretary of Agriculture on accomplishing efficiently the purposes of the Act of October 10, 1962 (16 U.S.C. 582a, et seq.), commonly known as the McIntire-Stennis Act of 1962. The Council also provides advice relative to the Forest Service research program, authorized by the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat.353, as amended; 16 U.S.C. 1600 (note)). Therefore, the Secretary of Agriculture is seeking nominations to fill six vacancies on the Council, and five additional vacancies that will occur when current appointments expire in December 2013.

DATES: Written nominations must be received by April 29, 2013. Nominations must contain a completed application packet that includes the nominee's name, resume, and completed form AD–755 (Advisory Committee Membership Background Information). The package must be sent to the address below.

ADDRESSES: Daina Dravnieks Apple, USDA Forest Service, Office of the Deputy Chief, Research and Devlopment, 1601 North Kent Street, 4th Floor, Arlington, Virginia 22209 by express mail or overnight courier service. If sent via the U.S. Postal Service, they must be sent to the following address: U.S. Department of Agriculture, Forest Service, Office of the Deputy Chief, Research and Development, Mail Stop 1120, 1400 Independence Avenue SW., Washington, DC 20250–1120.

FOR FURTHER INFORMATION CONTACT: Daina Dravnieks Apple, USDA Forest Service, Office of the Deputy Chief, Research and Devlopment, Telephone: (202) 205–1665, Email: *dapple@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 5 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), the Secretary of Agriculture intends to re-establish the Forestry Research Advisory Council (FRAC). The Council, a statutory committee, will continue to advise the Secretary of Agriculture on regional and national research planning and coordination of forestry research within the Federal and State agencies, forestry schools, forest industries, and non-governmental organizations. The Council may fulfill its responsibility to consult on a periodic or regular basis on apportionment of funds.

Advisory Council Organization

The Council will be comprised of not more than 20 members. The members appointed to the Council will be fairly balanced in terms of the points of view represented, functions to be performed, and will represent a broad array of expertise, leadership and relevancy to a membership category. Geographic balance and a balanced distribution among the categories are also important. The Council shall include five representatives each in the following categories: (1) Federal and State Agencies; (2) Industry; (3) Academic; and (4) Voluntary Organization. The Council members will serve staggered terms up to 3 years, and will meet annually, or as often as necessary and at such times as designated by the Designated Federal Officer (DFO). No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Council.

The appointment of members to the Council will be made by the Secretary of Agriculture. Vacancies on the Council will be filled in the manner in which the original appointment was made. Any individual or organization may nominate one or more qualified persons to serve on the Council. Individuals may also nominate themselves. Nominations for one individual who fits several of the categories or for more than one person who fits one category will be accepted. To be considered for membership, nominees must submit a:

1. Resume describing qualifications for membership to the Council;
2. Cover letter with a rationale for serving on the Council and what you can contribute;
3. Indication of the specific membership category of your interest; and
4. Complete form AD–755, Advisory Committee Membership Background Information. The form AD–755 may be obtained from the Forest Service contact person or from the following Web site: *http://www.usda.gov/documents/OCIO_AD_755_Master_2012.pdf.*
5. Letters of recommendations are welcome.

All nominations will be vetted by USDA. Nominations are open to all individuals without regard for race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. Nominations are being solicited from universities, organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of forestry research interests throughout the country. Members of the Council will serve without compensation, but may be reimbursed for travel expenses while performing duties on behalf of the Council, subject to approval by the DFO. A meeting notice will be published in the **Federal Register** 15 to 45 days before a scheduled meeting date. All meetings are generally open to the public and may include a ''public forum'' that may offer 5–10 minutes for participants to present comments to the advisory committee. The Chairperson of the given Council ultimately makes the decision whether to offer time on the agenda for the public to speak to the general body.

Equal opportunity practices, in line with USDA policies, will be followed in

all appointments to the advisory committee. To ensure that the recommendations of the FRAC have taken into account the needs of diverse groups served by the Department, membership will, to the extent practicable, include individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: February 20, 2012.

Gregory Parham,

Acting Assistant Secretary for Administration.

[FR Doc. 2013–05739 Filed 3–12–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Lysando AG of Triesenberg, Liechtenstein, an exclusive license to U.S. Patent Application Serial No. 12/470,321, ''LAMBDASA2 ENDOLYSIN TRUNCATION'', filed on May 21, 2009; U.S. Patent Application Serial No. 12/874,138, ''BACTERIOPHAGE LYTIC ENZYMES AS ALTERNATIVE ANTIMICROBIALS'', filed on September 1, 2010; U.S. Patent Application Serial No. 12/460,812, ''TRIPLE ACTING ANTIMICROBIALS THAT ARE REFRACTORY TO RESISTANCE DEVELOPMENT'', filed on July 24, 2009; and U.S. Patent Application Serial No. 12/784,675, ''FUSION OF PEPTIDOGLYCAN HYDROLASE ENZYMES TO A PROTEIN TRANSDUCTION DOMAIN ALLOWS ERADICATION OF BOTH EXTRACELLULAR AND INTRACELLULAR GRAM POSITIVE'', filed on July 24, 2009.

DATES: Comments must be received on or before April 12, 2013.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as Lysando AG of Triesenberg, Liechtenstein has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Robert Griesbach,

Assistant Administrator.

[FR Doc. 2013–05764 Filed 3–12–13; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Impact of Implementation of the Affordable Care Act on SNAP Operations and Participation

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for research on the impact of implementation of the Patient Protection and Affordable Care Act (ACA) on the operations of, and participation in, the Supplemental Nutrition Assistance Program (SNAP).

DATES: Written comments must be received on or before May 13, 2013.

ADDRESSES: 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, including the validity of the methodology and assumptions that were 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 use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Office of Research and Analysis, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via email to *Steve.Carlson@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson at 703–305–2017. Information requests submitted through email should refer to the title of this proposed collection and/or the OMB approval number in the subject line.

SUPPLEMENTARY INFORMATION:

Title: Impact of Implementation of the Affordable Care Act on SNAP Operations and Participation.

OMB Number: 0584—NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: The Supplemental Nutrition Assistance Program (SNAP) is the USDA's largest nutrition program, helping over 46 million low-income Americans (in fiscal year 2012) to purchase food. The program, administered by the Food and Nutrition Service (FNS), is designed to respond to broad economic and individual circumstances as they change over time. The program's operating environment will be influenced importantly by the implementation of the ACA.

This study will assess the impact of ACA implementation on participation in the SNAP among nonelderly nondisabled adults, ages 19–64. This issue has major significance not only in its implications for Federal and State

budgets, but also more generally for the economic well-being of America's adult workers and their families. ACA implementation could potentially have a profound impact on SNAP participation among nonelderly nondisabled adults 19 to 64 in many ways, including:

- Increase the number of nonelderly nondisabled adults that will newly apply for health coverage, including many who qualify for SNAP but do not participate. This could lead to a substantial increase in SNAP participation, even in States that do not implement the expanded Medicaid limits for income eligibility and retain their pre-ACA Medicaid eligibility standards.
- ACA's investment of Federal resources for improving eligibility information technology (IT) can be used to improve systems that Medicaid shares with SNAP.
- When people apply for SNAP and Medicaid benefits, caseworkers may draw from ACA's data-gathering mechanisms to reduce the work required to determine SNAP eligibility.
- Enrollment and retention under ACA departs from traditional methods used by public benefit programs. Among the major potential changes to be implemented in Medicaid are: the opportunity to enroll and renew remotely; verification through data matches; and renewing one's eligibility based on data matches, without required client action. These new approaches may inspire similar innovations with SNAP eligibility determination.
- In a State where Medicaid and SNAP use different eligibility systems, if Medicaid's system modernizes and SNAP's does not, SNAP will need to assume a larger share of spending to maintain and operate its eligibility system. Also, major changes in Medicaid eligibility could lead some States to move Medicaid outside the core responsibilities of social service agencies. If this happens, applicants may need to provide the same information multiple times to qualify for multiple programs, rather than once.
- Some States may use SNAP eligibility information to qualify uninsured adults and children for Medicaid. In States where Medicaid and SNAP use different eligibility systems, such an initiative could allow the IT work needed to connect the two systems to qualify for the Medicaid 90/10 match.
- States will need to rethink the integration of policies and models across benefits programs in light of the changes to Medicaid eligibility under ACA.

The potential for growth in SNAP participation varies substantially among States, in both absolute numbers and as percentages of current State-by-State SNAP caseloads. FNS has undertaken this study to better anticipate and measure these effects, through a combination of qualitative and quantitative research consisting of rigorous case studies in selected States and analyses of emerging national survey datasets. In each of the six study sites, the study seeks to describe and determine (1) the coordination of SNAP and Medicaid enrollment and renewal processes in the State and whether any changes came about with the ACA; (2) the process for directing Medicaid applicants to SNAP; and (3) the impact of ACA implementation on the number of SNAP applications.

The study includes a quantitative research component involving the use of administrative data in six States and a qualitative research component involving on-site staff interviews in six study sites. We will also undertake a detailed ''process mapping'' of the extent to which applicants for Medicaid enrollment or renewal are channeled toward SNAP enrollment or renewal (or vice versa). Our proposed quantitative approach relies on the analysis of case-level data extracted from State administrative datasets, in addition to State-provided counts and tabulations from their administrative data. At each of the six sites, hour-long semi-structured interviews will be conducted with State and local SNAP and Medicaid administrators, SNAP and Medicaid caseworkers and directors of community-based organizations involved with integrating the SNAP and Medicaid programs.

Affected State, Local and Not-for-Profit Institutions

There are 14 total types of respondents. Respondent groups identified include:

- Six State and local SNAP administrators and staff: State program director, assistant director for policy, assistant director for operations (including call center operations), local program director, case manager (initial enrollments) and case manager (renewals);
- Six State and local Medicaid administrators and staff: State program director, assistant director for policy, assistant director for operations, local program director, case manager (initial enrollments) and case manager (renewals); and
- Two community-level stakeholders: SNAP-focused Community Based Organization (CBO) representative and Medicaid-focused CBO representative.

Estimated Number of Respondents: The total estimated number of respondents is 84. This includes: (a) 36 State and local SNAP administrators and staff; (b) 36 State and local Medicaid administrators and staff; and (c) 12 community-level stakeholders.

Estimated Number of Responses per Respondent: Each respondent will be asked to participate in two in-person interviews—one interview in Year 2 of the project and a follow-up interview in Year 3 of the project.

Estimated Total Annual Responses: 84.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden on Respondents: 10,080 minutes (168 hours). See the table below for estimated total annual burden for each type of respondent.

Type of respondent	Survey instrument	Estimated number of respondents	Total number of responses per respondent	Estimated total annual responses	Estimated avg. number of hours per response	Estimated total hours
SNAP administrators and staff	Interview	36	2	72	1.00	72
Medicaid administrators and staff	Interview	36	2	72	1.00	72
Community-level stakeholders	Interview	12	2	24	1.00	24
Total Reporting Burden		84	2	168	1.00	168

Dated: March 4, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–05781 Filed 3–12–13; 8:45 am]

BILLING CODE 3410–30–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting; Request for Comments on Draft Evaluation of Recommended Practice on Fatigue Risk Management Systems for Personnel in the Refining and Petrochemical Industries

TIME AND DATE: April 24, 2013; 9:30 a.m. EDT.

PLACE: Ronald Reagan Building and International Trade Center, Horizon Room, 1300 Pennsylvania Avenue NW., Washington, DC 20004.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on Wednesday, April 24, 2013, starting at 9:30 a.m. EDT at the Ronald Reagan Building and International Trade Center, Horizon Room, 1300 Pennsylvania Avenue NW., Washington, DC 20004. At the meeting, CSB will consider and vote on the status of Recommendation No. 2005–04–I–TX–7 issued to the American Petroleum Institute (API) and the United Steelworkers International Union (USW) in March 2007. This recommendation urged API and USW to jointly lead the development of an ANSI consensus standard with guidelines for fatigue prevention. The CSB based this recommendation on its investigation of explosions and fires that occurred at BP's Texas City Refinery on March 23, 2005.

In addition the Board intends to consider status designations for the following recommendations to the U.S. Occupational Safety and Health Administration: 2001–05–I–DE–1 (Process Safety Management coverage of atmospheric storage tanks); 2005–04–I–TX–9 (Process Safety Management requirement for organizational management of change reviews); 2010–07–I–CT–1 (Regulations addressing fuel gas safety). Subject to the call of the chairperson, the Board may consider other recommendations-related items that have been calendared for consideration at a public meeting.

SUPPLEMENTARY INFORMATION: On March 23, 2005, explosions and fires in an isomerization unit (ISOM) at BP's Texas City Refinery caused 15 deaths, 180 injuries, and significant economic losses. The CSB's investigation found that the incident was caused by multiple technical, system, and organizational deficiencies. For detailed information on the incident and the CSB's investigation, please refer to the CSB's investigation report on the CSB's Web site, *www.csb.gov.*

Among its most important findings, the CSB concluded that the ISOM operators were likely fatigued from working 12-hour shifts, some working as many as 29 consecutive days during the turnaround of the unit prior to startup, and that, as a result, the operators' judgment and problem-solving skills were likely degraded, hindering their ability to determine that a distillation tower in the ISOM unit was overfilling with hydrocarbons and to take prompt corrective steps. Accordingly, the CSB issued Recommendation No. 2005–04–I–TX–7 to API and the USW which reads in pertinent part as follows:

> [D]evelop fatigue prevention guidelines for the refining and petrochemical industries that, at a minimum, limit hours and days of work and address shift work.

Both API and USW initially accepted the recommendation. The API, formed an ANSI committee that the USW joined. In August 2009, however, the USW withdrew from the committee in protest of what it perceived to be an imbalance in voting members (management vs. union and other representatives). The API proceeded with the committee's work and issued an ANSI-approved Recommended Practice (RP 755) in April 2010.

After review, the CSB staff found that RP 755 makes a contribution to chemical safety by explicitly stating that ''workplace fatigue is a risk to safe operations'' and also by suggesting various measures to manage fatigue risks. However, the staff determined that RP 755 does not fully meet the intent of the CSB recommendation in multiple important respects, and therefore has urged the Board to vote designating the status of Recommendation No. 2005–4–I–TX–7 as ''Open-Unacceptable Action.''

At the meeting on April 24, 2013, the staff will present its analysis to the Board. Following the staff presentation, the Board will hear comments from the public. Following the conclusion of the public comment period, the Board will consider whether to approve the proposed evaluation and to change the status of Recommendation No. 2005–04–I–TX–7 to ''Open-Unacceptable Action'' or to some other status in accordance with Board Order 22.

REQUEST FOR COMMENTS: The Board welcomes public comment on the staff evaluation and proposed disposition of Recommendation No. 2005–04–I–TX–7. The detailed draft evaluation will be posted on the CSB Web site by March 11, 2013, and will be available for review and comment until 5 p.m. E.D.T. on April 12, 2013. CSB encourages electronic submission of comments. Comments should be submitted by email to *fatiguecomments@csb.gov.* Comments may also be submitted by mail to Chemical Safety and Hazard Investigation Board, Attn: Amy McCormick, 2175 K Street, NW., Suite 650, Washington, DC 20037.

Comments may be submitted in the body of the email message or as an attached PDF, MS Word, or plain text ASCII file. Files must be virus-free and unencrypted. Include CSB–13–01 in the subject line of the message. Please ensure that the comments themselves, whether in the subject line, the body of the email or in attached files, include the docket number (CSB–13–01), the agency name, and your full name and address.

All comment and submissions must include the agency name and docket number. All comments received, including any personal information provided, will be made available to the public without modifications or deletions. While the public comments submitted before and during the meeting will be carefully analyzed by CSB staff and the Board, the Board does not assume any obligation to respond to comments individually or during the public meeting. Comments received by the CSB will be posted online in the Open Government section of the CSB Web site, *http://www.csb.gov/open.aspx.*

To ask any question regarding the submission of comments or to establish times to review these documents at CSB headquarters, please call Amy McCormick, Board Affairs Specialist, at (202) 261–7630.

No factual analyses, conclusions, or findings presented by staff should be considered final. Only after the Board has considered the staff presentations, listened to public comments, and voted to approve a change in status of the recommendation should that status be considered final.

The meeting will be free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the ''Contact Person for Further Information,'' at least five business days prior to the meeting.

The CSB is an independent Federal agency charged with investigating serious accidents that result in the release of extremely hazardous substances. The agency's Board

Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of accidents, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

CONTACT PERSON FOR FURTHER INFORMATION: Hillary J. Cohen, Communications Manager, *hillary.cohen@csb.gov* or (202) 446–8094. General information about the CSB can be found on the agency Web site at: *www.csb.gov.*

Dated: March 8, 2013.

Daniel M. Horowitz,

Managing Director.

[FR Doc. 2013–05854 Filed 3–11–13; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Multispecies Amendment 16.

OMB Control Number: 0648–0605.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 1,482.

Average Hours per Response: Pre-trip notification, trip start hail, trip forward hail, 48-hour notification for all multispecies vessels and provision of weigh-out slips to monitoring providers, 2 minutes each; monitoring system for discards and database entry, 3 minutes; transfer of annual catch entitlement, call-in for vessel monitoring system (VMS) unit confirmation, area and days-at-sea declaration, notification of monitor emergency, relay catch/discard data, days-at-sea transfers, 5 minutes each; VMS certification form, reporting of monitor deployments, Northwest Atlantic Fisheries Organization reporting, 10 minutes each; catch-reporting requirements, vessel trip-end hails, 15 minutes; notification of ejection from sector, monitoring reporting requirements for safety, copies of contracts and supporting documents, 30 minutes; Office of Law Enforcement debrief of monitor, 2 hours; sector manager weekly catch reports; 4 hours; sector manager annual catch reports, 12 hours; monitoring and reporting service provider's application, and response to denial, 10 hours each; submission of proposed special access programs; 20 hours; operations plan and NEPA analysis, 640 hours total.

Burden Hours: 80,637.

Needs and Uses: This request is for revision and extension of a current information collection. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of Commerce has the responsibility for the conservation and management of marine fishery resources. We, National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS), and the Regional Fishery Management Councils are delegated the majority of this responsibility. The New England Fishery Management Council (Council) develops management plans for fishery resources in New England.

In 2010, we implemented a new suite of regulations for the Northeast (NE) multispecies fishery through Amendment 16 to the Multispecies Fishery Management Plan (Amendment 16). This action updated status determination criteria for all regulated NE multispecies or ocean pout stocks; adopted rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing; revised management measures, including significant revisions to the sector management measures, necessary to end overfishing, rebuild overfished regulated NE multispecies and ocean pout stocks, and mitigate the adverse economic impacts of increased effort controls. It also implemented new requirements under Amendment 16 for establishing acceptable biological catch (ABC), annual catch limits (ACLs), and accountability measures (AMs) for each stock managed under the FMP, pursuant to the Magnuson-Stevens Act.

Revisions: The Restricted Gear Requirements have been removed from the regulations. Therefore the requirement to declare into these areas via VMS, or to receive an LOA are also removed from this information collection.

Also, percentages of trip monitoring, planned to change after the first three years, are changed.

In an attempt to consolidate reporting requirements that are mandated by the NE multispecies regulation, we propose moving some requirements out of OMB Control No. 0648–0202, Northeast Region Permit Family of Forms, and into this collection, including: The Days-at-Sea Transfer Program, Expedited Submission of Proposed Special Access Programs, and North Atlantic Fisheries Organization Reporting Requirements.

Affected Public: Business or other for-profit organizations.

Frequency: Annually, weekly, on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: March 7, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05720 Filed 3–12–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Malcolm Baldrige National Quality Award and Examiner Applications.

OMB Control Number: 0693–0006.

Form Number(s): None.

Type of Request: Regular submission (revision of a currently approved information collection).

Number of Respondents: 850 (50—Awardees; 800—Examiners).

Average Hours per Response: Award Applications, 74 hours; Examiner Applications, 1 hour.

Burden Hours: 4,500.

Needs and Uses: Public Law 100–107, the Malcolm Baldrige Quality Improvement Act of 1987, established an annual U.S. National Quality Award. The Secretary of Commerce leads and

NIST develops and manages the Award in corporation with the private sector. The purposes of the Award are to promote competitiveness and quality awareness, recognize the performance achievements of U.S. companies, and share successful strategies and practices. The law explicitly states that ''An organization may qualify for an award only if it permits a rigorous evaluation of the way in which its business and other operations have contributed to improvements in quality.'' The failure to collect the information required of the Award and Examiner applicants would make it impossible to evaluate the applications and grant the Awards, and violate our statutory responsibilities.

Revision: New Baldrige Award eligibility rules require applicants for the national award first receive the top-tier award from a Baldrige-based state or sector program. This intentionally reduced the number of national applications in an effort to strengthen Baldrige-based programs and to highlight the quality of national applications. The new eligibility rules therefore bring the most mature, best-qualified organizations to the national program.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; education and health care institutions, and government entities may apply for the Award. Individuals with expertise in the business, education, health care, and/or nonprofit fields are eligible to apply to become members of the Malcolm Baldrige National Quality Award Board of Examiners.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: March 7, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05718 Filed 3–12–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC554

Marine Mammals; File No. 17952

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Daniel P. Costa, Ph.D., Department of Biology and Institute of Marine Sciences, University of California, Santa Cruz, CA 95064, has applied in due form for a permit to conduct research on California sea lions (*Zalophus californianus*) in California, Oregon and Washington.

DATES: Written, telefaxed, or email comments must be received on or before April 12, 2013.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17952 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant would conduct research on California sea lions (*Zalophus californianus*) to investigate foraging, diving, energetics, food habits, and at sea distribution along the California coast. Procedures would include capture, sedation, morphometrics, isotope and Evans blue dye administration, blood sampling, tagging/marking, instrument attachment, stomach lavage and enema, urine sampling, swabs, blubber/muscle biopsy, metabolic measurements, doubly-labeled water measurements, hair and vibrissae collection, milk sampling, and scat collection. Up to 100 pups/juveniles and 100 adults would be sampled annually, with some or all of the procedures performed. The applicant also requests authorization to recapture tagged California sea lions throughout their U.S. range. Harassment of up to 8,450 California sea lions, 500 harbor seals (*Phoca vitulina*), and 300 northern elephant seals (*Mirounga angustirostris*) annually incidental to these activities is requested. The applicant also requests unintentional research-related mortality of up to 20 California sea lions over the course of the permit. Import and export of pinniped samples is also requested.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 8, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–05752 Filed 3–12–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC557

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Anchorage, AK.

DATES: The meetings will be held April 1–9, 2013. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. on Wednesday April 3, continuing through Tuesday April 9, 2013. The Scientific Statistical Committee (SSC) will begin at 8 a.m. on Monday April 1 and continue through Wednesday April 3, the Council's Advisory Panel (AP) will begin at 8 a.m. on Tuesday April 2 and continue through Friday April 5. The Enforcement Committee will meet, April 2, 1 p.m. to 5 p.m. (T). All meetings are open to the public, except executive sessions.

Council Plenary Session:

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Executive Director's Report

NMFS Management Report
ADF&G Report
United States Coast Guard (USCG) Report
United States Fish & Wildlife Service (USFWS) Report
Protected Species Report

2. Observer Program (Council only): Report from NMFS, outlines of first year report and Electronic Monitoring (EM); Report from Observer Advisory Committee (OAC).

3. Groundfish issues; final action on Bering Sea Aleutian Island (BSAI) Flatfish Specifications Flexibility; Final action on American Fisheries Act (AFA) Vessel replacement Gulf of Alaska (GOA) sideboards.

4. Steller Sea Lions (SSL) Environmental Impact Statement (EIS); review discussion paper on Bering Sea and Aleutian Island Pacific cod Allowable Biological Catch (ABC)/Total Allowable Catch (TAC) split; Initial review of the SSL EIS; select preliminary preferred alternative (PPA); Update on Biological Opinion (BiOp) analytical methods. (SSC only)

5. Scallop Stock Assessment Fishery Evaluation (SAFE): Review and approve Scallop SAFE and harvest specifications.

6. Community Quota Entity (CQE): Initial review/final action on CQE halibut/sablefish block restrictions.

7. Cooperative (Coop) reports and Salmon Prohibited Species Catch (PSC) (Council only): Receive Amendment 80 Cooperative reports; receive Central Gulf of Alaska (CGOA) Rockfish Coop report; receive AFA pollock coop and Individual Program Agreements (IPA) reports; Industry progress report on BSAI Chum salmon bycatch; Update on salmon genetics research.

8. Miscellaneous Issues: Preliminary review of analysis to create transit lane near Round Island; discussion paper on Bering Sea sablefish TAC specifications; expanded discussion paper on retention of 4A halibut in BSAI sablefish pots; Crab modeling report (SSC only); Research Priorities (SSC only).

9. Staff Tasking: Review Committees and tasking.

The SSC agenda will include the following issues:

1. Round Island Analysis.
2. Steller Sea Lions.
3. Scallop SAFE.
4. CQE block limits.
5. Crab Modeling.
6. Salmon Genetics.
7. Research Priorities.

The Advisory Panel will address most of the same agenda issues as the Council except B reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: March 8, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–05786 Filed 3–12–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Board on Coastal Engineering Research.

SUMMARY: Under the provisions of 10 U.S.C. 2166(e), the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is renewing the charter for the Board on Coastal Engineering Research (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall provide the Coastal Engineering Research Center, through the Chief of Engineers/Commander (''the Chief of Engineers''), U.S. Army Corps of Engineers (''the Corps of Engineers''), independent advice and recommendations on reports of investigations made concerning shore erosion on coastal and lake waters and the protection of such shores.

The Board shall report to the Secretary of the Army, through the Chief of Engineers/Commander, U.S. Army Corps of Engineers. The Chief of Engineers/Commander, U.S. Army Corps of Engineers, may act upon the Board's advice and recommendations. The Board, pursuant to 33 U.S.C. 426–2, shall be composed of not more than seven members.

DoD, pursuant to the authorizing legislation, shall appoint four officers of the Corps of Engineers to the Board as ex officio appointments, with one position being occupied by the Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers. The Chief of Engineers, in consultation with the Assistant Secretary of the Army (Civil Works), shall determine which three of the eight coastal division commanders shall be nominated as the other ex officio members of the Board. The Chief of Engineers, in determining which of the coastal division commanders shall serve on the Board, shall consider the individual's tenure as a division commander and his or her expertise in the matters before the Board.

The three civilian Board members shall be civilian engineers recommended by the Chief of Engineers for their expertise in the field of beach erosion and shore protection. The Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers, shall serve as the President of the Board.

Board members, who are not full-time or permanent part-time Federal officers or employees, shall be appointed by the Secretary of Defense to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employee (SGE) members. Civilian Board members may be appointed by the Secretary of Defense or Deputy Secretary of Defense for a two-year term of service, with annual renewals; however, no civilian member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service.

Pursuant to section 105 of Public Law 91–611, Board members who are not full-time or permanent part-time Federal officers or employees, may be paid at rates not to exceed the daily equivalent of the rate for a GS–15, step 10, for each day of attendance at Board meetings, not to exceed 30 days per year, in addition to travel and other necessary expenses connected with their official duties on the Board, in accordance with the provisions of 5 U.S.C. 5703(b), (d), and 5707. All other Board members shall receive compensation for travel and per diem for official travel.

DoD, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board. Establishment of subcommittees will be based on a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Secretary of the Army, as the DoD Sponsor.

Such subcommittees shall not work independently of the Board and shall report all of their recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Board, directly to DoD or any Federal officer or employee.

Subcommittee members, if not full-time or part-time Government employees, shall be appointed to serve as experts and consultants under the authority 5 U.S.C. 3109, and shall serve as SGE members. The Secretary of Defense or the Deputy Secretary of Defense may approve the appointment of subcommittee members for a two-year term of service with annual renewals; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. With the exception of travel and per diem for official travel related to the Board or its subcommittees, subcommittee members shall serve without compensation.

Each subcommittee member is appointed to provide advice to the Government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

All subcommittees, task forces, or working groups shall operate under the provisions of FACA, the Sunshine Act, other governing Federal statutes and regulations, and established DoD policies and procedures.

The Board shall meet at the call of the Board's Designated Federal Officer (DFO), in consultation with the Chairperson. The estimated number of Board meetings is no less than two per year.

In addition, the DFO is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the DFO, the Alternate DFO shall attend the entire duration of the Board or subcommittee meeting. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board.

All written statements shall be submitted to the DFO, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board's DFO can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: March 8, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–05728 Filed 3–12–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2013–0006]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Bonds and Insurance

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The Office of Management and Budget (OMB) has approved this information collection for use through June 30, 2013. DoD proposes that OMB extend its

approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by May 13, 2013.

ADDRESSES: You may submit comments identified by OMB Control Number 0704–0216, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: dfars@osd.mil. Include OMB Control Number 0704–0216 in the subject line of the message.

Fax: (571) 372–6094.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, at (571) 372–6099. The information collection requirements addressed in this notice are available via the Internet at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 228, Bonds and Insurance, and related clauses at 252.228; OMB Control Number 0704–0216.

Needs and Uses: DoD uses the information obtained through this collection to determine the allowability of a contractor's costs of providing war-hazard benefits to its employees; to determine the need for an investigation regarding an accident that occurs in connection with a contract; and to determine whether a contractor performing a service or construction contract in Spain has adequate insurance coverage.

Affected Public: Businesses or other for profit and not-for profit institutions.

Annual Burden Hours: 471.

Number of Respondents: 125.

Responses per Respondent: 1.

Annual Responses: 125.

Average Burden per Response: Approximately 4 hours

Frequency: On Occasion

Summary of Information Collection

The clause at DFARS 252.228–7000, Reimbursement for War-Hazard Losses, requires the contractor to provide notice and supporting documentation to the contracting officer regarding claims or potential claims for costs of providing war-hazard benefits to contractor employees.

The clause at DFARS 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, requires the contractor to report promptly to the administrative contracting officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with the contract.

The clause at DFARS 252.228–7006, Compliance with Spanish Laws and Insurance, requires the contractor to provide the contracting officer with a written representation that the contractor has obtained the required types of insurance in the minimum amounts specified in the clause, when performing a service or construction contract in Spain.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013–05733 Filed 3–12–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0069]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Foreign Graduate Medical School Consumer Information Reporting Form

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 12, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0069 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Foreign Graduate Medical School Consumer Information Reporting Form.

OMB Control Number: 1845–NEW.

Type of Review: New information collection.

Respondents/Affected Public: Private Sector; State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 25.

Total Estimated Number of Annual Burden Hours: 400.

Abstract: This is a request for a new collection to obtain consumer information from foreign graduate medical institutions that participate in the William D. Ford Federal Direct Loan Program (Direct Loan Program) as authorized under Title IV of the Higher Education Act of 1963, as amended, (HEA). The request is to gain approval of a form for reporting specific

graduation information to the Department of Education (Department) with a certification signed by the institutions President/CEO/Chancellor as well as for disseminating that information to prospective U.S. students. The Departments regulations, at 34 CFR 668.14(b)(7), require Title IV participating institutions to submit reports to the Department containing such information as the Secretary may reasonably require to carry out the purposes of the Title IV, HEA programs. This is being done to improve consumer information by providing more specific consumer information to prospective U.S. medical students at foreign institutions.

Dated: March 7, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–05709 Filed 3–12–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, March 15, 2013 9 a.m. to 5:45 p.m.

ADDRESSES: Bolger Center, 9600 Newbridge Drive, Potomac, Maryland 20854–4436.

FOR FURTHER INFORMATION CONTACT: Edmund J. Synakowski, Designated Federal Officer, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue SW.; Washington, DC 20585–1290; Telephone: 301–903–4941.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: To complete the charge given to the Committee in the letter from the Director, Office of Science, dated December 20, 2012, asking the Fusion Energy Sciences Advisory Committee to provide input and advice on new or upgraded scientific user facilities that could contribute to world leading science during 2014–2024 necessary to position the DOE Office of Science at the forefront of scientific discovery.

Tentative Agenda:

- DOE/SC perspective and FY 2014 Congressional Budget Request*
- FES perspective and FY 2014 Congressional Budget Request for FES*
- Report from the Subcommittee dealing the charge on Scientific User Facilities
- Status of the ITER Project
- Public Comments

*The budget discussion will be part of the agenda only if the President's Budget Request for FY 2014 has been sent to the Congress before the date of this meeting.

Note: The FESAC meeting will be broadcast live on the Internet. You may find out how to access this broadcast by going to the following site prior to the start of the meeting. A video record of the meeting including the presentations that are made will be archived at this site after the meeting ends: *http://doe.granicus.com/ViewPublisher.php?view_id=3*

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Dr. Ed Synakowski at 301–903–8584 (fax) or *Ed.synakowski@science.doe.gov* (email). Reasonable provision will be made to include the scheduled oral statements during the Public Comments time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of the meeting will be available for public review and copying within the Fusion Energy Sciences Advisory Committee Web site at: *http://www.science.doe.gov/ofes/fesac.shtml.*

Issued at Washington, DC, on March 11, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–05903 Filed 3–11–13; 4:15 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–027]

Notice of Petition for Waiver of Samsung Electronics America, Inc. from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of a petition for waiver from Samsung Electronics America, Inc. (Samsung) regarding specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. In its petition, Samsung provides an alternate test procedure that is the same as the test procedure DOE published in a final rule setting out testing requirements for manufacturers to follow starting in 2014. DOE solicits comments, data, and information concerning Samsung's petition and the suggested alternate test procedure. Today's notice also grants Samsung an interim waiver from the electric refrigerator and refrigerator-freezer test procedure, subject to use of the alternative test procedure set forth in this notice.

DATES: DOE will accept comments, data, and information with respect to the Samsung Petition until April 12, 2013.

ADDRESSES: You may submit comments, identified by case number ''RF–027,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov* Include the case number (Case No. RF–027) in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar refrigerator-freezer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On February 5, 2013, Samsung submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is designing new refrigerator-freezers that incorporate multiple defrost cycles. In its petition, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for multiple defrost cycles. Therefore, Samsung has asked to use an alternate test procedure that is the same as the test procedure provisions for products with long time or variable defrost DOE published in a final rule (77 FR 3559, 3564–3565, January 25, 2012). These provisions were placed in appendix A, which is not required for use until September 15, 2014, and not in the current appendix A1 test procedure. On January 27, July 19, and December 14, 2011, Samsung had submitted similar petitions for waiver and requests for interim waiver for other basic models of refrigerator-freezers that incorporate multiple defrost cycles. DOE subsequently granted a waiver for the products specified in these petitions. 77 FR 1474 (Jan. 10, 2012) and 77 FR 75428 (Dec. 20, 2012).

Samsung also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. DOE has determined, however, that it is likely Samsung's petition will be granted, and that it is desirable for public policy reasons to grant Samsung relief pending a determination on the petition. Previously, DOE granted a waiver to Samsung for other basic models incorporating multiple defrost technology (77 FR 1474, Jan. 10, 2012 and 77 FR 75428, Dec. 20, 2012), and DOE has determined that it is desirable to have similar basic models tested in a consistent manner.

Samsung's petition included an alternate test procedure to account for the energy consumption of its refrigerator-freezer models with multiple defrost cycles. The alternate test procedure specified by Samsung is the same as the test procedure published in the final rule referenced above. The alternate test procedure specified in this interim waiver (as well as the previous waiver granted to Samsung) is identical to the test procedure provisions for products with long time or variable defrost adopted in the final test procedure rule that manufacturers of these products are required to use in 2014.

For the reasons stated above, DOE grants Samsung's application for interim waiver from testing of its refrigerator-freezer product line containing multiple defrost cycles. Therefore, *it is ordered that:*

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

The application for interim waiver filed by Samsung is hereby granted for the specified Samsung refrigerator-freezer basic model that incorporates multiple defrost cycles, subject to the specifications and conditions below. Samsung shall be required to test or rate the specified refrigerator-freezer product according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic model:

RS27FD*****

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Samsung may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for Samsung in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, Samsung shall test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the Samsung products listed above only, Samsung shall include the following:

1. In section 1, Definitions, the following definition:

''Defrost cycle type'' means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor ''off'' cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

2. In section 4, Test Period, the following:

4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions (section 4.1). The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation.

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part of the test starts at the termination of the last regular compressor ''on'' cycle. The average temperatures of the fresh food and freezer compartments measured from the termination of the previous compressor ''on'' cycle to the termination of the last regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in either compartment to deviate from its average temperature for the first part of the test by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a ''precooling'' cycle, which is an extended compressor cycle that lowers the temperature(s) of one or both compartments prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the termination of the first regular compressor ''on'' cycle after both compartment temperatures have fully recovered to their stable conditions. The average temperatures of the compartments measured from this termination of the first regular compressor ''on'' cycle until the termination of the next regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. See Figure 1.

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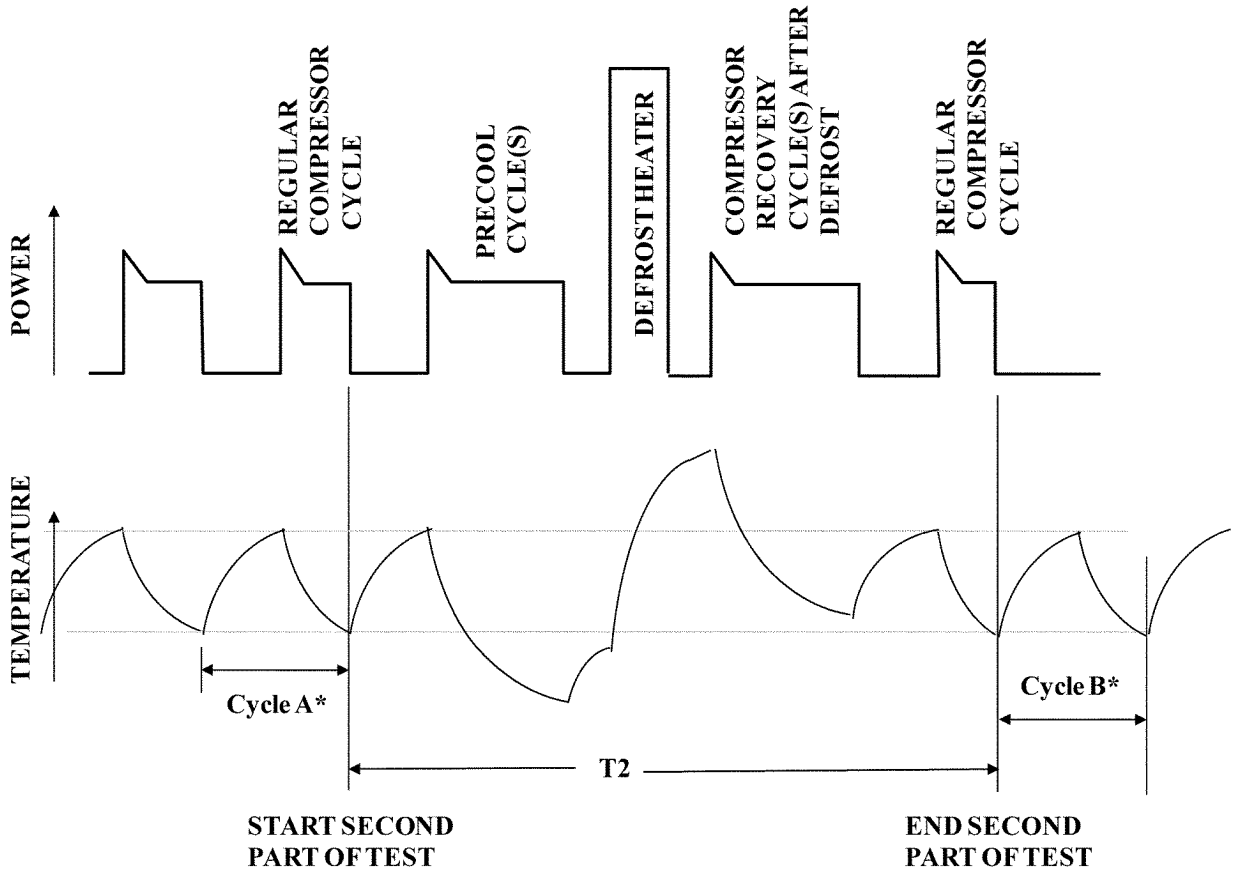

***Average compartment temperature(s) during cycles A & B must be within 0.5 °F of the average temperature(s) for the first part of the test.**

4.2.4 Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type.

3. In section 5, Test Measurements, the following:

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2; i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to $(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

CT_{Li} = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (CT_L for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 6 and 96 shall be used, respectively.

D is the total number of distinct defrost cycle types.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Samsung's petition

for waiver from certain parts of the test procedure that apply to refrigerator-freezers and grants an interim waiver to Samsung. DOE is publishing Samsung's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of refrigerator-freezer basic models that incorporate multiple defrost cycles.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 19 Chapin Road, Building D, Pine Brook, NJ 07058. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on March 7, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

February 5, 2013
Dr. David Danielson
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue SW.
Washington, DC 20585

Dear Assistant Secretary Danielson:

Samsung Electronics America, Inc. (''Samsung'') respectfully submits this Application for Interim Waiver and Petition for Waiver to the Department of Energy (''DOE'' or ''the Department'') for Samsung's compressor refrigerator-freezers with multiple defrost cycles.

Reasoning

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Current test procedures as prescribed in Appendix A1 to Subpart B of Part 430 (''Appendix A1'') do not adequately provide a way for Samsung to accurately represent the energy consumption of its refrigerator-freezers with multiple defrost cycles. DOE concurred with Samsung's understanding in the interim waiver granted to Samsung in 76 FR 16760 [2] and subsequently granted the waiver on January 10, 2012 (77 FR 1474). Additionally, DOE communicated that all manufacturers planning on marketing refrigerator-freezers with multiple defrost cycles must seek a waiver from the Department.[3]

For the reasons that DOE described in its granting of waiver (77 FR 1474) for Samsung refrigerator freezers with multiple defrost cycles, Samsung believes that the granting of Interim Waiver and Waiver for the models listed below are warranted.

Request

Samsung requests that the alternate test procedure for refrigerators with multiple defrost cycles, as prescribed in the waiver (77 FR 1474) and in the interim waiver (77 FR 13109) granted to Samsung, be granted for the following basic Samsung refrigerator-freezer with multiple defrost cycles models:

RS27FD*****

Please feel free to contact me if you have any questions regarding this Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,

Michael Moss

Director of Corporate Environmental Affairs

[FR Doc. 2013–05771 Filed 3–12–13; 8:45 am]

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[2] DOE understands, however, that absent an interim waiver, Samsung's products would not be accurately tested and rated for energy consumption because the current energy test procedure does not include test procedures for products with multiple defrost cycle types.

[3] Until these amendments are required in conjunction with the 2014 standards, manufacturers introducing products equipped with multiple defrost cycle types should, consistent with 10 CFR 430.27, petition for a waiver since the modified version of Appendix A1 set out in today's notice will not include a specified method for capturing this energy usage.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–026]

Petition for Waiver of Samsung Electronics America, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of granting application for interim waiver, and request for public comments.

SUMMARY: This notice announces receipt of a petition for waiver from Samsung Electronics America, Inc. (Samsung) seeking an exemption from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. Samsung asks that it be permitted to use an alternate test procedure to address the difficulties in testing dual compressor systems according to the currently applicable DOE test procedure. DOE solicits comments, data, and information concerning Samsung's petition and the suggested alternate test procedure. Today's notice also grants Samsung with an interim waiver from the electric refrigerator-freezer test procedure, subject to use of the alternative test procedure set forth in this notice. The waiver request pertains to the basic models set forth in Samsung's petition that incorporate dual compressors.

DATES: DOE will accept comments, data, and information with respect to the Samsung Petition until April 12, 2013.

ADDRESSES: You may submit comments, identified by case number ''RF–026,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov* Include the case number [Case No. RF–026] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy,

Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and electric refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure

On January 7, 2013, Samsung submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is seeking a waiver because it is developing new refrigerator-freezers that incorporate a dual-compressor design that is not contemplated under DOE's test procedure. In its petition, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 for the company's dual-compressor products. In its petition, Samsung has set forth an alternate test procedure and notes in support of its petition that DOE has already granted Sub-Zero a similar waiver pertaining to the use of dual compressor-equipped refrigerators. See 76 FR 71335 (November 17, 2011) (interim waiver) and 77 FR 5784 (February 6, 2012) (Decision and Order). DOE has also granted an interim waiver to LG. See 77 FR 44603 (July 30, 2012). While Samsung has acknowledged that its products have some differences from the ones addressed by the Sub-Zero waiver, Samsung asserts that the procedure outlined in that waiver will be compatible with its product. In addition, Samsung requests that it be permitted to use the alternate test procedure that DOE has already permitted Sub-Zero and LG to use in response to similar waiver requests pertaining to the testing of refrigerator-freezers that use shared dual compressors, with minor modification suggested below:

Before: 5.2.1.4 Dual Compressor Systems with dual Automatic Defrost

With Minor Change: 5.2.1.4 Dual Compressor Systems with Automatic Defrost (i=1 is mono, i=2 is dual)

Samsung also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(g).

DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. DOE recognizes, however, that the DOE test procedure for dual compressor systems primarily addresses independent, sealed systems, which differ from the shared system used by the models listed in Samsung's petition. As a result, it is not possible to test these products using the DOE test procedure, and use of the test procedure would provide test results so unrepresentative as to provide materially inaccurate comparative data. DOE reviewed the alternate procedure and determined that it will alleviate the testing problems associated with Samsung's implementation of a dual compressor system. Therefore, it appears likely that Samsung's petition for waiver will be granted. Previously, DOE granted Sub-Zero a similar waiver pertaining to the use of dual

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

compressor-equipped refrigerators. See 76 FR 71335 (November 17, 2011) (interim waiver) and 77 FR 5784 (February 6, 2012) (Decision and Order). DOE has also granted an interim waiver to LG. See 77 FR 44603 (July 30, 2012).

For the reasons stated above, DOE grants Samsung's application for interim waiver from testing of its refrigerator-freezer product line containing dual compressors. Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for Samsung's refrigerator-freezer product lines that incorporate dual compressors subject to the following specifications and conditions below. Samsung shall be required to test and rate its refrigerator-freezer product line containing dual compressors according to the alternate test procedure as set forth in section III, ''Alternate test procedure.''

The interim waiver applies to the following basic model groups:

RF32FM

* * * * *

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Samsung may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that granting of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for Samsung in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, Samsung shall test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the Samsung products listed above only, include:

5.2.1.4 Dual Compressor Systems with Automatic Defrost (i=1 is mono, i=2 is dual). The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

1440 = number of minutes in a day

ET is the test cycle energy (kWh/day);

i is a variable that can equal to 1, 2 or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

D is the total number of distinct defrost cycle types;

EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);

T1 is the length of time for EP1 (minutes);

EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);

T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.

CTi is the freezer compressor run time between instances of defrost cycle type i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR part 430, subpart B, appendix A1 clause 5.2.1.2. CTi for compartment i with variable defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

Steady State for EP1:

The temperature average for the first and last compressor cycle of the test period must be within 1.0 [degrees] F (0.6 [degrees] C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0 [degrees] F (0.6 [degrees] C) of the EP1 test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor on-cycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency

Measurements shall be taken at regular interval not exceeding 1 minute.

[End of 5.2.1.4]

IV. Summary and Request for Comments

Through today's notice, DOE grants Samsung an interim waiver from the specified portions of the test procedure applicable to Samsung's line of refrigerator-freezers with dual compressors and announces receipt of Samsung's petition for waiver from those same portions of the test procedure. DOE publishes Samsung's petition for waiver pursuant to 10 CFR 430.27(b)(1)(iv). The petition includes a suggested alternate test procedure to determine the energy consumption of Samsung's specified refrigerator-freezers with dual compressors. Samsung is required to follow this alternate

procedure as a condition of its interim waiver, and DOE is considering including this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 19 Chapin Road, Building D, Pine Brook, NJ 07058. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on March 7, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

January 7, 2013

The Honorable David Danielson
Assistant Secretary, Energy Efficiency and Renewable Energy
United States Department of Energy
Mail Station EE–1
Forrestal Building
1000 Independence Avenue SW
Washington, DC 20585

Dear Assistant Secretary Danielson:

Samsung Electronics America, Inc. (''Samsung'') respectfully submits the Application for Petition for Waiver and Application for Interim Waiver to the Department of Energy (''DOE'' or ''the Department'') regards to Samsung's residential refrigerator-freezers that use shared dual compressors.

Reasoning

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 when (1) the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Current test procedures as prescribed in Appendix A1 to Subpart B of 10 Part 430 do not adequately provide a way for Samsung to accurately represent the energy consumption of its refrigerator-freezers that use shared dual compressors. Meanwhile, based on similar situations, DOE has already granted a waiver to Sub-Zero in 77 FR 5784 on February 6, 2012, and similarly, an interim waiver to LG in 77 FR 44603 on July 30, 2012.

However, unlike Subzero's design which features two compressors, two evaporators, and two defrost heaters, Samsung's design features two compressors, four evaporators, and three defrost heaters.

Samsung's design features four compartments that have their own evaporators. Three compartments, freezer/convertible/fresh food compartment, are accessible with an exterior door and the fourth ice room compartment is a sub compartment and located inside of the fresh food compartment. Defrost heaters are adopted at three evaporators (freezer/convertible/ice room) except the fresh food compartment evaporator and those heaters operate all together at the same time according to the control logic. So essentially, there is only one defrost type. Despite these differences of the composition, Samsung believes that the test procedure, as prescribed in the waiver granted to Subzero and in the interim waiver granted to LG, is equally applicable and appropriate.

More specifically, Samsung's residential refrigerator-freezers that use shared dual compressors can be tested and calculate to a reasonable result with same test procedure granted to Subzero's waiver because the test procedure of Subzero's waiver adopt a multiple defrost system of 1, 2 or more compartment with distinct defrost system and Samsung's dual units have one defrost system despite of having four compartments and three defrost heaters as explained above.

Therefore, Samsung respectfully requests a waiver and an interim waiver for the alternate test procedure that DOE has already granted Sub-Zero and LG pertaining to the refrigerator-freezers that use shared dual compressors, with minor modification suggested below:

Before: 5.2.1.4 Dual Compressor Systems with dual Automatic Defrost

With Minor Change: 5.2.1.4 Dual Compressor Systems with Automatic Defrost (i=1 is mono, i=2 is dual)

Alternate Test Procedure

Replace the multiple defrost system section 5.2.1.4 of Appendix A1 with the following:

5.2.1.4 Dual Compressor Systems with Automatic Defrost. The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

- 1440 = number of minutes in a day
- ET is the test cycle energy (kWh/day);
- i is the variable that can equal to 1, 2 or more that identifies the compartment with distinct defrost system;
- D is the total number of compartments with distinct defrost systems;
- EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);
- T1 is the length of time for EP1 (minutes);
- EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);
- T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.
- CTi is the compressor on time between defrosts for only compartment i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.2. CTi for compartment i with variable defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

Steady State for EP1:

The temperature average for the first and last compressor cycle of the test period must be within 1.0°F (0.6°C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0°F (0.6°C) of the EP1 test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor oncycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency

Measurements shall be taken at regular interval not exceeding 1 minute.

For the reasons that DOE described in its granting of waiver and interim waiver for Sub-Zero and LG for refrigerator-freezers with shared dual compressors, Samsung believes that the expeditious granting of Waiver and Interim Waiver for the model listed below is warranted:

RF32FM

* * * * *

Please feel free to contact me if you have any questions regarding this Application for Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,

Michael Moss

Director of Corporate Environmental Affairs

[FR Doc. 2013–05767 Filed 3–12–13; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0494; FRL 9527–7]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Tips and Complaints Regarding Environmental Violations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Tips and Complaints Regarding Environmental Violations (Renewal)'' (EPA ICR No. 2219.04, OMB Control No. 2020–0032) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through March 31, 2013. Public comments were previously requested via the **Federal Register** (77 FR 69451) on November 19, 2012 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before April 12, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2009–0494 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michael Le Desma; Legal Counsel Division; Office of Criminal Enforcement, Forensics, and Training; Environmental Protection Agency, Building 25, Box 25227, Denver Federal Center, Denver, CO 80025; telephone number: (303) 462–9453; fax number: (303) 462–9075; email address: *ledesma.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: EPA tips and complaints web form is intended to provide an easy and convenient means by which members of the public can supply information to EPA regarding suspected violations of environmental law. The decision to provide a tip or complaint is entirely voluntary and use of the web form when supplying a tip or complaint is also entirely voluntary. Tippers need not supply contact information or other personal identifiers. Those who do supply such information, however, should know that this information may be shared by EPA with appropriate administrative, law enforcement, and judicial entities engaged in investigating or adjudicating the tip or complaint.

Form Numbers: None.

Respondents/affected entities: Anyone wishing to file a tip or complaint.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 9,202 (total).

Frequency of response: Occasionally.

Total estimated burden: 4,601 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $100,026 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 821 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects the fact that tips and complaints are being filed at a higher rate than originally anticipated, a strong indication of the success of this program. There has been no change in the information being reported or the estimated burden per respondent.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–05706 Filed 3–12–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0691; FRL–9529–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Mercury Cell Chlor-Alkali Plants (Renewal)

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 an Information Collection Request

(ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 12, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0691, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 17, 2012 (77 FR 63813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0691, which is available for either public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Mercury Cell Chlor-Alkali Plants (Renewal).

ICR Numbers: EPA ICR Number 2046.07, OMB Control Number 2060–0542.

ICR Status: This ICR is scheduled to expire on May 31, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart IIIII.

Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semi-annually at a minimum.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 921 hours per response. ''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 which have subsequently changed; 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: Owners or operators of mercury cell chlor-alkali plants.

Estimated Number of Respondents: Two.

Frequency of Response: Initially, daily, monthly, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 3,682.

Estimated Total Annual Cost: $372,952, which includes $356,552 in labor costs, no capital/startup costs, and $16,400 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. The decrease in labor hours and costs is due to fewer sources being subject to the standards, and is not due to any program changes. The previous ICR estimated that nine mercury cell chlor-alkali facilities were subject to the NESHAP. In 2010, EPA conducted an industry analysis in support of a proposed rule revision, which indicated that there has been a decrease in the respondent universe, and that only four facilities were subject to the rule at the time. In consulting with the Chlorine Institute for this current ICR, it was found that only two facilities are in operation in 2013 due to recent plant closures. Therefore, the total number of sources was decreased from nine to two. The decrease in the number of sources also results in a decrease in the total O&M costs.

Respondent and Agency burden calculations presented in the previous ICR estimated individual technical, managerial, and clerical labor hours separately for each burden item. To make the calculation methodology consistent with other ICRs, we have revised the burden tables to show estimates of technical labor hour per occurrence for each burden activity. Managerial and clerical labor hours for each burden item are assumed to account for an additional 5 and 10 percent, respectively, of estimated technical labor hours.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–05707 Filed 3–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0702; FRL–9529–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Area Sources: Polyvinyl Chloride and Copolymer Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium (Renewal)

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 12, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0702, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 17, 2012 (77 FR 63813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0702, which is available for either public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Area Sources: Polyvinyl Chloride and Copolymer Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium (Renewal).

ICR Numbers: EPA ICR Number 2240.04, OMB Control Number 2060–0596

ICR Status: This ICR is scheduled to expire on May 31, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subparts DDDDDD, EEEEEE, FFFFFF, and GGGGGG.

Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required annually at a minimum.

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 regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 12 hours per response. ''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 which have subsequently changed; 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: Owners or operators of polyvinyl chloride and copolymer, primary copper smelter, secondary copper smelter, primary nonferrous metals—zinc, cadmium, and beryllium that is an area source of HAP emissions.

Estimated Number of Respondents: 5.

Frequency of Response: Initially.

Estimated Total Annual Hour Burden: 46.

Estimated Total Annual Cost: $4,454, which includes $4,454 in labor costs, no capital/startup costs, and no operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. However, there is an increase in labor costs from the most-

recently approved ICR due to an adjustment in labor rates. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–05705 Filed 3–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0703; FRL–9528–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Prepared Feeds Manufacturing (Renewal)

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 12, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0703, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email: to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 17, 2012 (77 *FR* 63813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0703, which is available for either public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Prepared Feeds Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 2354.03, OMB Control Number 2060–0635.

ICR Status: This ICR is scheduled to expire on March 31, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart DDDDDDD.

Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required annually at a minimum.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 34 hours per response. ''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 which have subsequently changed; 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: Owners or operator of area source prepared feed manufacturing facilities.

Estimated Number of Respondents: 1,800.

Frequency of Response: Initially and annually.

Estimated Total Annual Hour Burden: 62,079.

Estimated Total Annual Cost: $6,048,294, which includes $6,011,058 in labor costs, no capital/startup costs, and $37,236 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in the burden and cost estimates occurred because the standard has been in effect for more than three years and the requirements are different during initial compliance (new facilities) as compared to on-going compliance (existing facilities). The previous ICR reflected those burdens and costs associated with the initial activities for subject facilities. This includes purchasing monitoring equipment and establishing recordkeeping systems. This ICR reflects

the on-going burden and costs for existing facilities. Activities for existing source include continuously monitoring of pollutants and the submission of annual compliance certifications. The overall result is an increase in labor hours and cost for both the respondents and the Agency.

There is a decrease in capital/startup costs and an increase in O&M costs for the respondents. The capital/startup costs decreased because existing sources have already purchased monitoring equipment necessary to comply with the rule. The overall O&M costs increased because the previous ICR only accounted for the operation and maintenance costs incurred during the third year after rule promulgation. This ICR reflects annual O&M costs for each year of the ICR's three-year period.

Additionally, there is an adjustment increase in labor rates which also attributes to an increase in cost. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–05658 Filed 3–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0955; FRL–9379–4]

Notice of Receipt of Request To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by a registrant to voluntarily cancel certain pesticide registrations. EPA intends to issue a cancellation order granting these requests at the close of the comment period for this notice. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been canceled only if such sale, distribution, or use is consistent with the terms as described in the final cancellation order.

DATES: Comments must be received on or before April 12, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0955, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Rusty Wasem.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Rusty Wasem, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6979; email address: *wasem.russell@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting (CBI).* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from Spectrum Group (Spectrum) to cancel five pesticide products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit. The requests for voluntary cancellation were conditioned, for some of the products, on the effective date of cancellation and the Agency's allowance of certain sale and distribution of existing stocks of canceled product. At the end of the 30-day period identified above, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations in a manner consistent with the conditional nature of the request for cancellation.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
8845–39	Rid-A-Rat and Mouse Killer	Warfarin.
8845–125	Hot Shot Sudden Death Brand Mouse Killer	Bromethalin.
8845–126	Hot Shot Sudden Death Brand Rat Killer 1	Bromethalin.
8845–127	Hot Shot Sudden Death Brand Mouse and Rat Killer	Bromethalin.
8845–128	Hot Shot Sudden Death Brand Mouse Killer Bait Station	Bromethalin.

Table 2 of this unit includes the address of Spectrum.

TABLE 2—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
8845	Spectrum Group, A Division of United Industries, 1 Rider Trail Plaza Drive, Suite 300, Earth City, MO 63045.

III. What is the Agency's authority for taking this action?

Section 6(f)(1)(A) of FIFRA provides that a registrant of a pesticide product may, at any time, request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B)(A) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The products listed in Table 1 of Unit II do not represent minor agricultural uses and thereby are not eligible for a 180-day comment period on their request for voluntary cancellation. In addition, Spectrum has requested that EPA waive any 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of canceled pesticide products that are in the United States and that were appropriately packaged, labeled, and released for shipment prior to the effective date of cancellation of the underlying registration. It is EPA's intention to issue a cancellation order treating existing stocks after cancellation of the registrations identified in Table 1 as follows:

1. For product registered under EPA registration number 8845–127:

i. Cancellation of this registration will become effective on August 1, 2013. The registrant has agreed to a cap upon production of product between January 30, 2013, and July 31, 2013. All subsequent conditions are contingent on the registrant abiding by the terms of this production cap.

ii. The registrant will be permitted to sell and distribute stocks of 8845–127 until November 1, 2013. After November 1, 2013, the registrant will be prohibited from selling or distributing the product, except for export consistent with FIFRA section 17 or for proper disposal.

iii. Existing stocks may be sold and distributed by persons other than the registrant until the later of the following two dates:

a. September 1, 2014; or

b. The last date for which sales of rodenticide products (including existing stocks) registered by Reckitt Benckiser that are subject to the Notice of Intent to Cancel signed by EPA on January 29, 2013, remain legally permissible under FIFRA.

Users will be allowed to use existing stocks until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product.

2. For products registered under EPA registration numbers 8845–39, 8845–125, 8845–126, and 8845–128:

Cancellation of these registrations shall become effective on April 12, 2013. Upon cancellation, EPA intends to prohibit all sale or distribution of existing stocks of these products by any person, except for export consistent with FIFRA section 17, proper disposal, or return to the person from whom the product was purchased. Users will be allowed to use existing stocks until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 1, 2013.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–05834 Filed 3–12–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2013–0020]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP087073XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank

Board of Directors prior to final action on this Transaction.

Reference: AP087073XX.

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of U.S. manufactured commercial aircraft to the Philippines.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger air service between the Philippines and destinations in Asia, Canada, and other routes.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Philippine Airlines, Inc.

Guarantor(s): N/A.

Description of Items Being Exported:

Boeing 777 aircraft.

Information On Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/newsandevents/boardmeetings/board/*

Confidential information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before April 8, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV*. To submit a comment, enter EIB–2013–0020 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0020 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2013–05744 Filed 3–12–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, March 7, 2013 at 3:06 p.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting was closed to the public.

ITEMS TO BE DISCUSSED: During the previously announced consideration in a public session of the Petition for Rulemaking submitted by the Center for Individual Freedom, the Commission unanimously voted to close a portion of the meeting so that it could discuss matters concerning participation in civil actions or proceedings. The Commission subsequently returned to public session in order to complete its action on the matter.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2013–05941 Filed 3–11–13; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011426–053.

Title: West Coast of South America Discussion Agreement.

Parties: Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; Interocean Lines, Inc.; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd. (dba Ecuadorian Line); and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment excludes Peru from the membership of four of the parties.

Agreement No.: 011741–019.

Title: U.S. Pacific Coast-Oceania Agreement.

Parties: A.P. Moller-Maersk A/S; ANL Singapore PTE Ltd./CMA CGM S.A.; Hamburg-Sud; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW. Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes A.P. Moller-Maersk A/S as a party to the agreement. The amendment also adjusts the vessel provision and allocation provision of the agreement, adjusts the scope of the two service strings operated under the agreement, adjusts the maximum size of the vessels which can be deployed by the parties, and restates the agreement.

Agreement No.: 012196.

Title: MSC/CSAV Ecuador—North Europe Vessel Sharing Agreement.

Parties: Compania Sud Americana de Vapores, S.A. and MSC Mediterranean Shipping Company, SA.

Filing Party: Walter H. Lion, McLaughlin & Stern, LLP; 260 Madison Avenue, New York, NY 10016.

Synopsis: The agreement authorizes CSAV and MSC to cross-charter space to each other in the trade from ports in North Europe to ports on the U.S. East Coast on the one hand, and from ports on the U.S. East Coast to Panama and Ecuador, on the other hand.

Dated: March 8, 2013.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–05778 Filed 3–12–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has formally requested that the parties to the below listed agreement provide additional information pursuant to 46 U.S.C. § 40304(d). This action prevents the agreement from becoming effective as originally scheduled. Interested parties may file comments within fifteen

(15) days after publication of this notice in the **Federal Register**.

Agreement No.: 011962–009.

Title: Consolidated Chassis Management Pool Agreement.

Parties: The Ocean Carrier Equipment Management Association and its member lines; the Association's subsidiary Consolidated Chassis Management LLC and its affiliates; CCM Holdings LLC; CCM Pools LLC and its subsidiaries; Matson Navigation Co.; and Westwood Shipping Lines.

By Order of the Federal Maritime Commission.

Dated: March 8, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–05779 Filed 3–12–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Marjorie Jane Danielson, Freeport, Maine, and Anne Danielson Pick, St. Paul, Minnesota, both as individuals, and The Clifford and Marjorie Danielson for M. Jane Danielson Child's Trust; The Clifford and Marjorie Danielson for M. Jane Danielson's Descendants Trust; The Clifford and Marjorie Danielson for Anne Pick Child's Trust; The Clifford and Marjorie Danielson for Anne Pick's Descendants Trust,* all of Sycamore, Illinois, as a group acting in concert to retain voting shares of NI Bancshares, Corporation, and thereby indirectly retain voting shares of The National Bank & Trust Company, both in Sycamore, Illinois.

Board of Governors of the Federal Reserve System, March 8, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–05768 Filed 3–12–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Southern BancShares (N.C.), Inc.,* Mount Olive, North Carolina; to merge with Heritage BancShares, Inc., and thereby indirectly acquire The Heritage Bank, both in Lucama, North Carolina.

Board of Governors of the Federal Reserve System, March 8, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–05769 Filed 3–12–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0980]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 12, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0584. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance on Reagents for Detection of Specific Novel Influenza A Viruses—(OMB Control Number 0910–0584—Extension

In accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c), FDA evaluated an application for an in vitro diagnostic device for detection of influenza subtype H5 (Asian lineage), commonly known as avian flu. FDA concluded that this device is properly classified into class II in accordance with section 513(a)(1)(B) of the FD&C Act, because it is a device for which the general controls by themselves are

insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls to provide such assurance. The statute permits FDA to establish as special controls many different things, including postmarket surveillance, development and dissemination of guidance recommendations, and ''other appropriate actions as the Secretary deems necessary'' (section 513(a)(1)(B) of the FD&C Act). This information collection is a measure that FDA determined to be necessary to provide reasonable assurance of safety and effectiveness of reagents for detection of specific novel influenza A viruses.

FDA issued an order classifying the H5 (Asian lineage) diagnostic device into class II on February 3, 2006, establishing the special controls necessary to provide reasonable assurance of the safety and effectiveness of that device and similar future devices. The new classification was codified in 21 CFR 866.3332, a regulation that describes the new classification for reagents for detection of specific novel influenza A viruses and sets forth the special controls that help to provide a reasonable assurance of the safety and effectiveness of devices classified under that regulation. The regulation refers to the special controls guidance document entitled ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses,'' which provides recommendations for measures to help provide a reasonable assurance of safety and effectiveness for these reagents. The guidance document recommends that sponsors obtain and analyze postmarket data to ensure the continued reliability of their device in detecting the specific novel influenza A virus that it is intended to detect, particularly given the propensity for influenza viruses to mutate and the potential for changes in disease prevalence over time. As updated sequences for novel influenza A viruses become available from the World Health Organization, National Institutes of Health, and other public health entities, sponsors of reagents for detection of specific novel influenza A viruses will collect this information, compare them with the primer/probe sequences in their devices, and incorporate the result of these analyses into their quality management system, as required by 21 CFR 820.100(a)(1). These analyses will be evaluated against the device design validation and risk analysis required by 21 CFR 820.30(g), to determine if any design changes may be necessary.

FDA estimates that 10 respondents will be affected annually. Each respondent will collect this information twice per year; each response is estimated to take 15 hours. This results in a total data collection burden of 300 hours. The guidance also refers to previously approved information collections found in FDA regulations. The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

In the **Federal Register** of September 25, 2012 (77 FR 58997), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

FD&C Act section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
513(g)	10	2	20	15	300

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 7, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05722 Filed 3–12–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0010]

Cooperative Agreement To Support Regulatory Research Related to Food and Drug Administration Commitments Under the 2012 Prescription Drug User Fee Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its intention to accept and consider a single source application for award of a cooperative agreement to the Brookings Institution's Engelberg Center for Health Care Reform (ECHCR) in support of efforts to inform major initiatives for process improvement and regulatory science related to FDA commitments under the 2012 reauthorization of the Prescription Drug User Fee Act (PDUFA V).

DATES: Important dates are as follows:

1. The application due date is April 15, 2013.

2. The anticipated start date is June 1, 2013.

3. The expiration date is April 16, 2013.

For Further Information and Additional Requirements Contact:

Adam Kroetsch, Office of Planning and Analysis, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1192, Silver Spring, MD 20993, 301–796–3842, *Adam.Kroetsch@fda.hhs.gov;*

or

Yemisi Akinneye, Office of Acquisitions and Grants Services, Food and Drug Administration, 5630 Fishers Lane, HFA 500, Rm. 2037, Rockville, MD 20857, 301–827–0079, *Oluyemisi.Akinneye@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://grants2.nih.gov/grants/guide/and/or http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm093567.htm.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–13–005; 93.103.

A. Background

The FDA Center for Drug Evaluation and Research (CDER) seeks to support efforts to research, identify key issues, and convene appropriate subject matter experts to help inform major initiatives for process improvement and regulatory

science related to FDA commitments under PDUFA V. PDUFA, first enacted in 1992, has provided FDA with the resources and process enhancements to enable a transformation of the human drug review process, increasing the quality, number, and timely access to new drugs for U.S. patients.

The 2012 reauthorization of PDUFA initiated a set of performance goals and procedures for FDA through fiscal year 2017. These performance goals represent a series of commitments which were established in consultation with drug industry representatives, patient and consumer advocates, and health care professionals. Specific PDUFA commitments include public meetings, staff training procedures, and efficiency standards on a variety of issues. More information about FDA's commitments under PDUFA V can be found at the following Web site: *http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf.*

B. Research Objectives

In the most recent reauthorization of PDUFA, FDA has committed to build on a record of continuing improvement through a wide range of new innovative initiatives related to virtually every aspect of the new drug life cycle, each of which represent specific areas of research interest. These initiatives may include, but not be limited to, the following:

- Enhancing regulatory science and expediting drug development;
- Advancing metaanalysis methods;
- Advancing the use of biomarkers and pharmacogenomics;
- Developing and enhancing patient-reported outcomes to support patient-focused drug development;
- Facilitating rare disease drug development;
- Structured approaches to enhancing FDA's assessment of benefits and risks in human drugs;
- Improving evaluation, standardization, and integration of Risk Evaluation and Mitigation Strategies (REMS);
- Exploring the use of Sentinel as a tool for evaluating drug safety issues; and
- Requiring electronic submissions and standardization of electronic application data.

Several key areas of research interest are described in greater detail below:

1. Developing and Enhancing Patient-Reported Outcomes To Support Patient-Focused Drug Development

The advancement of patient-reported outcome measures (PROs) is designed to promote patient engagement throughout the drug development process. FDA has dedicated steps toward the development of these tools by expanding clinical and statistical staff capacity, providing qualification consultations, and promoting best practices for the use of outcome assessment tools. FDA seeks to identify the challenges and opportunities within the current review and qualification of PROs, to address key issues with PRO evidentiary standards, develop new methods for communication between the multiple stakeholders involved in PROs, and identify best practices for evaluation and statistical analysis and design of PROs.

2. Structured Approaches to Enhancing FDA's Assessment of Benefits and Risks in Human Drugs

FDA recognizes that the Agency's efforts to develop a more structured approach to benefit-risk assessment could be complemented by further engagement of stakeholders and other parties. This engagement seeks to focus on the current efforts and methods that have been applied to structure and communicate regulatory decisions, including the relevance to the work of a regulator and how well such approaches integrate with how regulators think about their decisions. FDA expects that these discussions would focus on the results of implementing frameworks at regulatory agencies both in premarket application review as well as post-market safety review, providing an opportunity to share challenges and lessons learned in applying a more structured approach to regulatory decision-making.

3. Improving Evaluation, Standardization, and Integration of REMS

FDA seeks stakeholder and expert feedback on approaches to standardizing of REMS and integrating them into the health care delivery system. Areas for research include the following:

- A standardized methodology for selecting appropriate risk management interventions when a REMS is deemed necessary. Such a methodology should allow FDA and sponsors to proactively identify and address the underlying causes of patient harm, and evaluate and prioritize risk management interventions based on evidence of their effectiveness and burden on the health care delivery system.
- Standard approaches and best practices for implementing REMS and integrating them into the existing health care delivery system. These approaches may include the use of improved methods for communicating with and training REMS stakeholders and the use of information technology to facilitate REMS implementation.
- Standard methods to evaluate REMS, including methods to assess REMS effectiveness, impact on patient access, and burden on the health care delivery system.

C. Approach

In order to achieve these research objectives as part of its PDUFA V commitments, FDA has committed to seek input from relevant external subject matter experts and other interested public stakeholders. In addition, this input process should be conducted so as to be timely, well-informed, candid, thoughtful, thorough, and well-documented.

FDA has a limited capacity to conduct the needed research to fully inform and undertake these external expert engagements to ensure the successful accomplishment of these PDUFA V commitments. FDA is therefore seeking to establish a cooperative agreement with the Brookings Institution's ECHCR for its unique qualifications and experience in the conduct of the needed research, workshops and other meetings, and related work.

The goal of this collaboration is to support the implementation of PDUFA V performance goals by convening stakeholders with diverse expertise. Through a series of meetings, workshops, webinars, and/or workgroups, ECHCR would provide effective opportunities for engagement of these stakeholders to inform implementation of the PDUFA V goals. In addition to gathering input from selected stakeholder groups, ECHCR may conduct background research prior to expert engagement, and to communicate updates on the progress of PDUFA implementation to broader audiences. Specific objectives of this collaboration would include:

- Working collaboratively with FDA to identify and prioritize pressing issues related to the implementation of PDUFA reauthorization performance goals and procedures;
- Conducting research and reviews of relevant literature to plan the focus of sessions in which experts are convened to provide critical input to FDA regulatory enhancement discussions;
- Convening expert stakeholders in focused, substantive discussions of these issues, and identify and explore potential strategies for resolving them; and
- Developing reports that summarize the background research and discussion

at each meeting and post these reports for public access.

D. Eligibility Information

The following organization is eligible to apply: ECHCR. Within the Brookings Institution, the mission of the ECHCR is to provide practical solutions to achieve high-quality, innovative, affordable health care with particular emphasis on identifying opportunities on the national, State, and local levels. Leveraging its status as a neutral, nonprofit, research-focused institution with deep health care policy and technical expertise, ECHCR frequently serves as a convener of discussions, workshops, and symposia on complex policy and science topics. The Center has developed a reputation as an ''honest broker'' with the ability to identify practical solutions that reflect the best available science and input from all stakeholders. The performance goals and procedures outlined within PDUFA V will require a high degree of leadership, research, outreach, and involvement from a broad range of stakeholders across the health care system. ECHCR is uniquely qualified to conduct the background research and act as a convener for engaging critical stakeholders, raising awareness, and identifying practical solutions that identify and overcome potential challenges and help determine a clear path forward.

II. Award Information/Funds Available

A. Award Amount

FDA intends to fund one award, corresponding to a total of $700,000, for fiscal year (FY) 2013. Future year amounts will depend on annual appropriations. CDER anticipates providing in FY2013 up to $700,000 (total costs include direct and indirect costs) for one award subject to availability of funds in support of this project. The possibility of four additional years of support is contingent upon successful performance and the availability of funds, and would provide funds up to following amounts:

FY 2014: $721,000
FY 2015: $743,000
FY 2016: $765,000
FY 2017: $788,000

B. Length of Support

The support will be 1 year with the possibility of an additional 4 years of noncompetitive support. Continuation beyond the first year will be based on satisfactory performance during the preceding year, receipt of a noncompeting continuation application and available Federal FY appropriations.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://grants2.nih.gov/grants/guide* and/or *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm093567.htm*. (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) Persons interested in applying for a grant may obtain an application at *http://grants.nih.gov/grants/forms.htm*. For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*. After you have followed these steps, submit paper applications to: Yemisi Akinneye, Grants Management, 5630 Fishers Lane, HFA–500, rm. 2037, Rockville, MD.

Dated: March 8, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05726 Filed 3–12–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0221]

Draft Guidance for Industry and Review Staff on Formal Dispute Resolution: Appeals Above the Division Level; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and review staff entitled ''Formal Dispute Resolution: Appeals Above the Division Level.'' This guidance is intended to provide recommendations for industry on the procedures in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) for resolving scientific and procedural disputes that cannot be resolved at the division level. This guidance describes procedures for formally appealing such disputes to the office or center level and providing information to assist FDA officials in resolving the issue(s) presented. This guidance revises the guidance of the same name issued in February 2000.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 11, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amy Bertha, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6469, Silver Spring, MD 20993–0002, 301–796–0700; or, Sheryl Lard-Whiteford, Center for Biologics Evaluation and Research (HFM–4), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and review staff entitled ''Formal Dispute Resolution: Appeals Above the Division Level.'' In the course of drug review, CDER and CBER make a wide variety of scientific and procedural decisions that are critical to a sponsor's drug development program. Sometimes, a

sponsor may disagree with one of these decisions, and a dispute arises. Because these disputes often involve complex scientific or procedural matters and also may be precedent setting, it is critical that there be procedures in place to encourage open, prompt discussion of such disputes. The procedures and policies described in this guidance are intended to promote rapid resolution of scientific and procedural disputes between sponsors and FDA. This draft guidance is a revision of the guidance of the same name that published in February 2000. The procedures and policies have been updated to reflect the current practices.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on formal dispute resolution regarding appeals above the division level. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this draft guidance have been approved under OMB control number 0910–0430. This draft guidance is a revision of an earlier version of the guidance. The revised version contains no additional information collections; therefore, it continues to be covered under OMB control number 0910–0430.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov.*

Dated: March 7, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05721 Filed 3–12–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0595]

Guidance for Industry on Tablet Scoring: Nomenclature, Labeling, and Data for Evaluation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Tablet Scoring: Nomenclature, Labeling, and Data for Evaluation.'' This guidance provides recommendations to sponsors of new drug applications (NDAs) and abbreviated new drug applications (ANDAs) regarding what criteria should be met when evaluating and labeling tablets that have been scored. (A scoring feature facilitates tablet splitting, which is the practice of breaking or cutting a higher-strength tablet into smaller portions.) Specifically, this guidance recommends guidelines to follow, data to provide, and criteria to meet and detail in an application to support approval of a scored tablet; and nomenclature and labeling for approved scored tablets.

This guidance does not address specific finished-product release testing, where additional requirements may apply to scored tablets. This guidance does not describe the medical practice conditions under which tablet splitting is considered or recommended.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Russell Wesdyk, Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4182, Silver Spring, MD 20993–0002, 301–796–2400.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Tablet Scoring: Nomenclature, Labeling, and Data for Evaluation.'' This guidance provides recommendations to sponsors of NDAs and ANDAs regarding what criteria should be met when evaluating and labeling tablets that have been scored. (A scoring feature facilitates tablet splitting, which is the practice of breaking or cutting a higher-strength tablet into smaller portions.) Specifically, this guidance recommends:

- Guidelines to follow, data to provide, and criteria to meet and detail in an application to support approval of a scored tablet; and
- Nomenclature and labeling for approved scored tablets.

On August 30, 2011 (76 FR 53909), FDA announced the availability of the draft version of this guidance. The public comment period closed on November 28, 2011. A number of comments were received from the public, all of which the Agency considered carefully as it finalized the guidance and made appropriate changes. The Agency also held an Advisory Committee for Pharmaceutical Science and Clinical Pharmacology meeting on August 9, 2012, to discuss the draft guidance. Any changes to the guidance were minor and made to clarify statements in the draft guidance.

The Agency has previously considered tablet scoring as an issue when determining whether a generic drug product is the same as the reference listed drug (RLD). One characteristic of a tablet dosage form is that it may be manufactured with a score or scores. This characteristic is useful because the score can be used to facilitate the splitting of the tablet into fractions when less than a full tablet is desired for a dose. Although there are

no standards or regulatory requirements that specifically address scoring of tablets, the Agency recognizes the need for consistent scoring between a generic product and its RLD.

Consistent scoring ensures that the patient is able to adjust the dose, by splitting the tablet, in the same manner as the RLD. This enables the patient to switch between products made by different manufacturers without encountering problems related to the dose. In addition, consistent scoring ensures that neither the generic product nor the RLD has an advantage in the marketplace because one is scored and one is not.

The Center for Drug Evaluation and Research's Drug Safety Oversight Board considered the practice of tablet splitting at its October 2009 and November 2010 meetings. During those meetings, they discussed how insurance companies and doctors are increasingly recommending that patients split tablets, either to adjust the patients' dose or as a cost-saving measure. Because of this, the Agency conducted internal research on tablet splitting and concluded that in some cases, there are possible safety issues, especially when tablets are not scored or evaluated for splitting. The Agency's concerns with splitting a tablet included variations in the tablet content, weight, disintegration, or dissolution, which can affect how much drug is present in a split tablet and available for absorption. In addition, there may be stability issues with splitting tablets.

Tablet splitting also is addressed in pharmacopeial standards. The European Pharmacopeia currently applies accuracy of subdivision standards for scored tablets—and has at various times also included standards for content uniformity, weight variation, and loss of mass—while the United States Pharmacopeia published a Stimuli article in 2009 proposing criteria for loss of mass and accuracy of subdivision for split tablets.

As an outgrowth of these discussions, FDA is providing recommendations for application content regarding the scientific basis for functional scoring on solid oral dosage form products to ensure the quality of both NDA and ANDA scored tablet products. To accomplish this, the Agency has developed consistent and meaningful criteria by which scored tablets can be evaluated and labeled by: (1) Providing a harmonized approach to chemistry, manufacturing, and controls reviews of scored tablets; (2) ensuring consistency in nomenclature (e.g., score versus bisect) and labeling; and (3) providing information through product labeling or other means to health care providers.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on tablet scoring: Nomenclature, labeling, and data for evaluation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

III. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in § 201.57 (21 CFR 201.57) and 21 CFR 314.50 and 314.70 have been approved under OMB control numbers 0910–0572 (for § 201.57) and 0910–0001 (for 21 CFR part 314).

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: March 7, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05725 Filed 3–12–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Food and Drug Administration/Xavier University Global Medical Device Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) Cincinnati District, in cosponsorship with Xavier University, is announcing a public conference entitled ''FDA/Xavier University Global Medical Device Conference.'' This 3-day public conference includes presentations from key FDA officials and industry experts with small group breakout sessions. The conference is intended for companies of all sizes and employees at all levels.

Date and Time: The public conference will be held on May 1, 2013, from 8:30 a.m. to 5 p.m.; May 2, 2013, from 8:30 a.m. to 5 p.m.; and May 3, 2013, from 8:30 a.m. to 1 p.m.

Location: The public conference will be held on the campus of Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073 or 513–745–3396.

Contact Persons: For information regarding this notice: Gina Brackett, Food and Drug Administration, 6751 Steger Dr., Cincinnati, OH 45237, 513–679–2700, Fax: 513–679–2771, *Gina.Brackett@fda.hhs.gov.*

For information regarding the conference and registration: Marla Phillips, Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073, *phillipsm4@xavier.edu.*

Registration: There is a registration fee. The conference registration fees cover the cost of the presentations, training materials, receptions, breakfasts, and lunches for the 3 days of the conference. Early registration ends March 13, 2013. Standard registration ends April 9, 2013. There will be onsite registration. The cost of registration is as follows:

TABLE 1—REGISTRATION FEES [1]

Attendee type	Advanced rate (March 13, 2013 to April 8, 2013)	Standard rate (April 9, 2013 to May 3, 2013)
Industry	$1,295	$1,495
Small Business (<100 employees)	900	1,000
Consultant	600	700
Startup Manufacturer	250	300
Academic	250	300
FDA/Government Employee	(2)	Free

[1] The following forms of payment will be accepted: American Express, Visa, Mastercard, and company checks.
[2] Free.

To register online for the public conference, please visit the ''Register Now'' link on the conference Web site at *http://www.XavierMedCon.com.* FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

To register by mail, please send your name, title, firm name, address, telephone and fax numbers, email, and payment information for the fee to Xavier University, Attention: Sue Bensman, 3800 Victory Pkwy., Cincinnati, OH 45207. An email will be sent confirming your registration.

Attendees are responsible for their own accommodations. The conference headquarter hotel is the Downtown Cincinnati Hilton Netherlands Plaza, 35 West Fifth St., Cincinnati, OH, 45202, 513–421–9100. Special Conference Block rates are available through April 9, 2013. To make reservations online, please visit the ''Venue & Logistics'' link at *http://www.XavierMedCon.com.*

If you need special accommodations due to a disability, please contact Marla Phillips (see Contact Persons) at least 7 days in advance of the conference.

SUPPLEMENTARY INFORMATION: The public conference helps fulfill the Department of Health and Human Services and FDA's important mission to protect the public health. The conference will provide those engaged in FDA-regulated medical devices (for humans) with information on the following topics:

- CDRH Future Vision and Strategy Keynote Address
- U.S. Congressman Erik Paulsen Keynote Dinner
- EU Regulations: New Regulations, Company Strategy, and Open Discussion Forum
- FDA Safety and Innovation Act
- Unique Device Identification
- Update from the Office of Device Evaluation
- Total Product Life Cycle: Interactive Workshop
- Pre-Submission Program and Meetings with the FDA
- 510(k): New FDA Guidance and Industry Regulations
- PMAs: New Guidance and Compliance Initiatives
- Software and Mobile Apps
- Combination Products
- Entering the EU Market and CE Mark Hot Topics
- Global Product Strategy
- Success in Central and South America
- FDA Inspectional Approach—Panel with Current FDA Investigators

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The conference helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The conference also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) by providing outreach activities by Government Agencies to small businesses.

Dated: March 8, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05727 Filed 3–12–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-day Comment Request: Pediatric Palliative Care Campaign Pilot Survey

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Nursing Research (NINR), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 26, 2012, page 76053 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Nursing Research (NINR), National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) 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 Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Adrienne Burroughs, Health Communications Specialist, Office of Communications and Public Liaison, NINR, NIH, Building 31, Room 5B10, 31 Center Drive, Bethesda, MD 20892 or call non-toll-free number (301) 496–0256 or Email your request, including your address to: *adrienne.burroughs@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Pediatric Palliative Care Campaign Pilot Survey,

0925-New—National Institute of Nursing Research (NINR), National Institutes of Health (NIH).

Need and Use of Information Collection: NINR developed a Pediatric Palliative Care Campaign to address the communications challenges faced by health care providers who recommend and provide palliative care to pediatric populations. NINR is launching this effort to increase the use of palliative care for children living with serious illness or life-limiting conditions. The Pediatric Palliative Care Campaign Pilot Survey will assess the information and materials being disseminated as part of the Pediatric Palliative Care Campaign pilot. Survey findings will help (1) determine if the pilot campaign is effective, relevant, and useful to health care providers who recommend and provide palliative care to pediatric populations; (2) to better understand current perceptions, challenges, and information needs of health care providers when it comes to discussing pediatric palliative care so that information and materials can be refined; and (3) examine how effective the campaign pilot materials are in starting and continuing a pediatric palliative care conversation and addressing the communications needs of health care providers around this topic. This assessment will deliver strategic and actionable guidance for refining the campaign materials so that they can be used by a wider audience of health care providers.

OMB approval is requested for 1 year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 25.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Physicians	25	1	30/60	12.5
Nurses	25	1	30/60	12.5
Total	50	1	30/60	25

Dated: March 4, 2013.

Amanda Greene,

Science Evaluation Officer/Project Clearance Liaison, NINR, NIH.

[FR Doc. 2013–05774 Filed 3–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-day Comment Request: Early Career Reviewer Program Online Application System—Center for Scientific Review (CSR)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, Center for Scientific Review, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) 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; (2) 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; (3) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Monica Basco, ECR Program, Center for Scientific Review, 6701 Rockledge Dr., Room 3220, Bethesda, MD 20892 or call non-toll-free number (301) 300–3839 or Email your request, including your address to: *CSRearlyCareerReviewer@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Early Career Reviewer Program Online Application System—Center for Scientific Review (CSR), 0925- New Information Collection Request), Center for Scientific Review (CSR), National Institutes of Health (NIH).

Need and Use of Information Collection: The Center for Scientific Review (CSR) is the portal for NIH grant applications and their review for scientific merit. Our mission is to see that NIH grant applications receive fair, independent, expert, and timely reviews—free from inappropriate influences—so NIH can fund the most promising research. To accomplish this goal, Scientific Review Officers (SRO) form study sections consisting of scientists who have the technical and scientific expertise to evaluate the merit of grant applications. The CSR Early Career Reviewer (ECR) program was developed to identify and train qualified scientists who are early in their scientific careers and who have not had prior CSR review experience. Currently, the application process involves repeated email interactions with potential applicants and manual management of information. To make the application process more efficient for applicants and for CSR staff, we are working with the Information Management Branch at CSR to develop online application software which includes the collection of applicants' names, contact information, and professional CV. This PRA clearance request is to develop online application software for ECR program applicants.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 650.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Applicants	1,560	1	25/60	650

Dated: February 1, 2013.

Timothy J. Tosten,

Executive Officer, Deputy Ethics Counselor, Director, Division of Management Services, Center for Scientific Review, NIH.

[FR Doc. 2013–05776 Filed 3–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information on the FY 2013–2018 Strategic Plan for the Office of Disease Prevention

SUMMARY: The purpose of this Request for Information (RFI) is to seek broad public input on the Fiscal Year (FY) 2013–2018 Strategic Plan for the Office of Disease Prevention (ODP), National Institutes of Health (NIH).

DATES: To ensure consideration, responses must be received by April 14, 2013.

ADDRESSES: Comments must be submitted electronically using the web-based form available at *http://prevention.nih.gov/aboutus/strategic_plan/rfi.aspx.*

FOR FURTHER INFORMATION CONTACT: Please direct all inquiries to Wilma Peterman Cross, M.S.; Senior Public Health Advisor, Office of Disease Prevention, National Institutes of Health; phone: 301–496–1508; email: *prevention@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The mission of ODP is to improve the public health by increasing the scope, quality, dissemination, and impact of prevention research supported by the NIH. ODP will fulfill this mission by providing leadership for the development, coordination, and implementation of prevention research in collaboration with the NIH Institutes and Centers (ICs) and other partners. The Office is responsible for advising the Director, NIH, regarding prevention research issues, actions, and activities. The Office also provides overall guidance to the ICs on biomedical programs that seek to improve the nation's health through research, training, knowledge translation, and public education as they relate to health promotion and disease prevention.

Prevention research at the NIH encompasses research designed both to promote health and to prevent the onset of disease, disorders, or injuries and the progression of asymptomatic disease. Prevention research targets biology and genetics, individual behavior, factors in the social and physical environments, and health services; and it informs and evaluates health-related policies and regulations. Prevention research includes:

- Identification and assessment of risk and protective factors.
- Screening and identification of individuals and groups at risk.
- Development and evaluation of interventions to reduce risk.
- Translation and dissemination of effective preventive interventions into practice.
- Development of research methods to support this work.

The Office was established in 1986 in response to a directive in the Health Research Extension Act of 1985. With increased attention on the application of prevention research nationally and the recent reorganization of ODP, the Office has embarked on an extensive planning process to develop a strategic plan for FY 2013–2018.

Information Requested

This RFI is intended to gather broad public input on the strategic priorities to be included in the plan and other suggestions on how to enhance the prevention research portfolio at the NIH. The ODP invites input from prevention researchers in academia and industry; from health care professionals, patient advocates and advocacy organizations, scientific or professional organizations, federal agencies; and from other interested members of the public. Organizations are strongly encouraged to submit a single response that reflects the views of their organization and membership as a whole.

Your perspectives can include, but are not limited to, the following topics as they relate to the six draft strategic priorities listed below:

- Suggested changes, additions, or deletions to the list of strategic priorities
- Recommended measurable objectives associated with an individual priority
- Appropriate benchmarks for gauging progress toward each recommended objective.

Strategic Priority #1: Systematically monitor NIH investments in prevention research and the progress and results of that research.

Strategic Priority #2: Identify and promote prevention research areas that deserve expanded effort and investment by the NIH.

Strategic Priority #3: Promote the use of the best available methods in prevention research and support the development of new and innovative approaches.

Strategic Priority #4: Encourage development of collaborative prevention research projects and facilitate coordination of such projects across the NIH and with other public and private entities.

Strategic Priority #5: Identify and promote the use of effective evidence-based interventions.

Strategic Priority #6: Increase the visibility of prevention research at the NIH and across the country.

In addition to the strategic priorities, the ODP welcomes suggestions on how to enhance the prevention research portfolio at the NIH:

1. Suggested changes to the approach used by the NIH to develop funding opportunity announcements that could improve the quality of prevention research supported by the NIH.
2. Suggested changes to the approach used by the NIH to review applications that could improve the quality of prevention research supported by the NIH.
3. Suggested changes to the approach used by the NIH in managing funded projects that could improve the quality of prevention research supported by the NIH.

How To Submit a Response

To ensure consideration, responses must be received by April 14, 2013, and should be submitted electronically using the web-based form available at *http://prevention.nih.gov/aboutus/strategic_plan/rfi.aspx.* The web form will provide confirmation of response

submission, but respondents will not receive individualized feedback. All respondents are encouraged to sign up for the ODP email list at *http://prevention-nih.org/subscribe* to receive information related to Office activities, including updates on the development and release of the final strategic plan. Responses to this RFI are voluntary and may be submitted anonymously. Please do not include any personally identifiable or other information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in responses. Comments submitted will be compiled for discussion and incorporated into the ODP strategic plan as appropriate. Any personal identifiers (personal names, email addresses, etc.) will be removed when responses are compiled. This RFI is for informational and planning purposes only and is not a solicitation for applications or an obligation on the part of the United States Government to provide support for any ideas identified in response to it. Please note that the U.S. Government will not pay for the preparation of any information submitted or for use of that information.

Dated: February 5, 2013.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2013–05773 Filed 3–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment National Advisory Council; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment National Advisory Council on April 10, 2013.

The meeting is open to the public and will include a discussion of the Center's current administrative, legislative, and program developments. Public comments are welcome. To attend on-site, or request special accommodations for persons with disabilities, please register at SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or contact the Council's Designated Federal Officer, Ms. Cynthia Graham (see contact information below).

Committee Name: Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: April 10, 2013 9:00 a.m.–4:30 p.m. (OPEN).

Place: SAMHSA, 1 Choke Cherry Road, Sugarloaf Conference Room, Rockville, MD 20857.

Contact: Cynthia Graham, M.S., Designated Federal Official, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, MD 20857, Telephone: (240) 276–1692, FAX: (240) 276–1690, Email: *cynthia.graham@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2013–05407 Filed 3–12–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

National Advisory Council; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Council (NAC) on April 12, 2013.

The meeting will include a recap of the April 11, 2013 Joint Council meeting, and discussions of the National Behavioral Health Quality Framework and Barometer, National Dialogue, and prescription drug abuse.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857 in the Sugarloaf Conference Room. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting.

Five minutes will be allotted for each presentation.

The meeting may be accessed via teleconference. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx*, or communicate with SAMHSA's Committee Management Officer, Ms. Geretta Wood (see contact information below).

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site at *https://nac.samhsa.gov/WomenServices/index.aspx*, or by contacting Ms. Wood. The transcript for the meeting will be available on the SAMHSA Committees' Web site within three weeks after the meeting.

Committee Name: SAMHSA's National Advisory Council.

Date/Time/Type: Friday, April 12, 2013 from 9 a.m. to 3:30 EDT: OPEN.

Place: SAMHSA, 1 Choke Cherry Road, SAMHSA Sugarloaf Conference Room, Rockville, Maryland 20857.

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official of the SAMHSA National Advisory Council and SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2252 and Email: *geretta.wood@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2013–05757 Filed 3–12–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the combined meeting on April 11, 2013, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) four National Advisory Councils (the SAMHSA National Advisory Council (NAC), the Center for Mental Health Services NAC, the Center for Substance Abuse Prevention NAC, the Center for Substance Abuse Treatment NAC), and the two SAMHSA Advisory Committees (Advisory Committee for Women's Services, and the Tribal Technical Advisory Committee).

The Councils were established to advise the Secretary, Department of Health and Human Services (HHS), the Administrator, SAMHSA, and Center Directors, concerning matters relating to the activities carried out by and through the Centers and the policies respecting such activities.

Under Section 501 of the Public Health Service Act, the Advisory Committee for Women's Services (ACWS) is statutorily mandated to

advise the SAMHSA Administrator and the Associate Administrator for Women's Services on appropriate activities to be undertaken by SAMHSA and its Centers with respect to women's substance abuse and mental health services.

Pursuant to Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, SAMHSA established the Tribal Technical Advisory Committee (TTAC) for working with Federally-recognized Tribes to enhance the government-to-government relationship, honor Federal trust responsibilities and obligations to Tribes and American Indian and Alaska Natives. The SAMHSA TTAC serves as an advisory body to SAMHSA.

The April 11 combined meeting will include a report from the SAMHSA Administrator, an update on SAMHSA's Budget, and discussions related to the Newtown initiatives, evidence based practices, disparities and faith based iniatitives. The meeting will also include updates on international activities, disaster response and health reform.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857 in the 1st floor Conference Rooms. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

The meeting may be accessed via teleconference. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Committee Management Officer, Ms. Geretta Wood (see contact information below).

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site at *https://nac.samhsa.gov/WomenServices/index.aspx,* or by contacting Ms. Wood. The transcript for the meeting will be available on the SAMHSA Committees' Web site within three weeks after the meeting.

Committee Names: Substance Abuse and Mental Health Services Administration National Advisory Council, Center for Mental Health Services National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National Advisory Council, SAMHSA's Advisory Committee for Women's Services, SAMHSA Tribal Technical Advisory Committee.

Date/Time/Type: Thursday, April 11, 2013 from 9 a.m. to 5:30 EDT: Open.

Place: SAMHSA, 1 Choke Cherry Road, SAMHSA 1st floor Conference Rooms, Rockville, Maryland 20857.

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official of the SAMHSA National Advisory Council and SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2252 and Email: *geretta.wood@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2013–05756 Filed 3–12–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on April 10, 2013.

The meeting is open to the public. It will include a report from the Associate Administrator for Women's Services and Chair of the ACWS, an update from the SAMHSA Women's Coordinating Committee and an update from the Office of Behavioral Health Equity on Trauma. The meeting will also include discussions of Girls in Transition and Disparities in the Criminal Justice System.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857 in Conference Room 8–1070. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

The meeting may be accessed via teleconference. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx*, or communicate with SAMHSA's Committee Management Officer, Ms. Geretta Wood (see contact information below).

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site at *https://nac.samhsa.gov/WomenServices/index.aspx*, or by contacting Ms. Wood. The transcript for the meeting will be available on the SAMHSA Committees' Web site within three weeks after the meeting.

Committee Name: SAMHSA's Advisory Committee for Women's Services.

Date/Time/Type: Wednesday, April 10, 2013 from 9 a.m. to 5:30 EDT: OPEN.

Place: SAMHSA, 1 Choke Cherry Road, SAMHSA Conference Room 8–1070, Rockville, Maryland 20857.

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council and SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2252 and Email: *geretta.wood@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2013–05755 Filed 3–12–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2012–0073]

Privacy Act of 1974; Department of Homeland Security, U.S. Customs and Border Protection—DHS/CBP–018—Customs—Trade Partnership Against Terrorism (C–TPAT) System, System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to

establish a new system of records titled, ''Department of Homeland Security, U.S. Customs and Border Protection, DHS/CBP–018 Customs—Trade Partnership Against Terrorism System of Records.'' This system of records allows the Department of Homeland Security/U.S. Customs and Border Protection, DHS/CBP–018, Customs-Trade Partnership Against Terrorism to collect and maintain records about members of the trade community related to Customs and Border Protection's Customs-Trade Partnership Against Terrorism program. Businesses accepted into the program, called partners, agree to analyze, measure, monitor, report, and enhance their supply chains in exchange for greater security and facilitated processing offered by Customs and Border Protection. The Customs-Trade Partnership Against Terrorism program allows Customs and Border Protection to focus its resources on higher risk businesses and thereby assists the agency in achieving its mission to secure the border and facilitate the movement of legitimate international trade. This new system of records collects and manages information, including personally identifiable information, about prospective, ineligible, current, or former trade partners in Customs-Trade Partnership Against Terrorism, and other entities and individuals in their supply chains. This system also collects and maintains information, including personally identifiable information, regarding members of a foreign government secure supply chain program that have been recognized by Customs and Border Protection, through a mutual recognition arrangement or comparable arrangement, as being compatible with the program. The Customs-Trade Partnership Against Terrorism program provides a Security Link Portal, which allows partners and applicants to access and manage their information. Customs and Border Protection is publishing this new system of records notice in order to notify the public about the system, permit trade partners access to the information they provide, and offer a description of how and where information is collected and maintained. Additionally, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking elsewhere in the **Federal Register**, to exempt this system of records from certain provisions of the Privacy Act. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: The new system of records will be effective April 12, 2013, unless comments are received that result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number DHS–2012–0073 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–325–0280), CBP Privacy Officer, U.S. Customs and Border Protection, 90 K Street NE. Washington, DC 20229. For privacy issues please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), US Customs and Border Protection (CBP) proposes to establish a new DHS system of records titled, ''DHS/CBP–018–C–TPAT System of Records.''

CBP is publishing this new system of records notice to notify the public about the system and offer a description of how CBP collects and maintains information pertaining to prospective, ineligible, current, or former trade partners in C–TPAT; other entities and individuals in their supply chains; and members of foreign governments' secure supply chain programs that have been recognized by CBP, through a mutual recognition arrangement or comparable arrangement, as being compatible with C–TPAT.

CBP will use the information collected and maintained through the C–TPAT program to carry out its trade facilitation, law enforcement, and national security missions. In direct response to 9/11, CBP challenged the trade community to partner with the government to design a new approach to supply chain security—one that protects the United States from acts of terrorism by improving security while facilitating the flow of compliant cargo and conveyances. The result was the Customs-Trade Partnership Against Terrorism (C–TPAT)—an innovative, voluntary government/private sector partnership program. C–TPAT is a voluntary program in which certain types of businesses agree to cooperate with CBP in the analysis, measurement, monitoring, reporting, and enhancement of their supply chains.

Businesses accepted in to C–TPAT are called partners and agree to take actions to protect their supply chain, identify security gaps, and implement specific security measures and best practices in return for facilitated processing of their shipments by CBP. The program focuses on improving security from the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination. The current security guidelines for C–TPAT program members address a broad range of topics including personnel, physical and procedural security; access controls; education, training and awareness; manifest procedures; conveyance security; threat awareness; and documentation processing. These guidelines offer a customized solution for the members, while providing a clear minimum standard that approved companies must meet.

Businesses eligible to fully participate in C–TPAT include U.S. importers; U.S./Canada highway carriers; U.S./Mexico highway carriers; rail and sea carriers; licensed U.S. Customs brokers; U.S. marine port authority/terminal operators; U.S. freight consolidators; ocean transportation intermediaries and non-operating common carriers; Mexican and Canadian manufacturers; and Mexican long-haul carriers. As part of its development, CBP plans to include exporters from the United States in C–TPAT.

There are three tiers of C–TPAT partnership, with each tier having its own set of requirements and corresponding facilitated processing. In general, businesses are considered applicants until CBP has vetted the information in the application and accepted the business into the program. Once accepted, the business is designated as a Tier One certified partner, and a site visit is arranged. The site visit is used to validate the partner's supply chain security and leads to importers becoming Tier Two validated partners. As C–TPAT has incorporated other eligible business types, it has led

to those businesses becoming certified, validated non-importers. If an importer with Tier Two validated partner status exemplifies best practices in its supply chain security, it may attain Tier Three validated partner status. As a business progresses up the tiers, it receives more facilitated processing at ports of entry.

Information is collected directly from C–TPAT partners or applicant businesses seeking membership in C–TPAT and indirectly from trade partners or through Mutual Recognition Arrangements (MRA) or memoranda of understanding relating to harmonization efforts between CBP and the foreign secured supply chain program. In the course of enrolling, certifying, and validating C–TPAT trade partners and their supply chains, the C–TPAT system will receive personally identifiable information (PII) and confidential business information from trade entities and their representatives.

To participate in the C–TPAT program, a company is required to submit a confidential, on-line application using the C–TPAT Security Link Portal, *https://ctpat.cbp.dhs.gov.* The C–TPAT Security Link Portal is the public-facing portion of the C–TPAT system used by applicants to submit the information in their company and supply chain security profiles. Initially, the applicant business provides basic business-identifying information in the company profile using the online application form. This business-identifying information is used to verify the identity and actual existence of the applicant business and may include basic identifying elements and/or PII used in the importation of cargo, such as U.S. Social Security Numbers (SSN) for sole proprietors, Internal Revenue Service Business Identification Numbers, and Customs assigned identification numbers (such as Manufacturer Identification numbers and Broker/Filer codes, etc.). Point of contact information is collected for the business, as well as owner information.

Additionally, the applicant business must complete a Supply Chain Security Profile (SCSP). The information provided in the SCSP is a narrative description of the procedures the applicant business uses to adhere to each C–TPAT Security Criteria or Guideline articulated for their particular business type (importer, customs broker, freight forwarder, air, sea, and land carriers, contract logistics providers, etc.) together with any supporting documentation. Data elements entered by the applicant business are accessible for update or revision through the C–TPAT Security Link Portal. An applicant's SCSP must provide supply chain security procedures for each business in the applicant's supply chain, even if those businesses are not, or do not desire to become partners of C–TPAT separately. This information is focused on the security procedures of those businesses (e.g., whether the business conducts background investigations on employees), rather than the individuals related to those businesses (e.g., a list of employee names).

A CBP Supply Chain Security Specialist (SCSS) vets the SCSP information provided by the applicant by querying that information through various information sources and systems, and queries of publicly available data (e.g., through Google). The SCSS will then evaluate the SCSP information against the results provided by such system vetting, derogatory or otherwise, and indicate whether the applicant is fit for the program in the Security Link Portal. Derogatory vetting results are incorporated into an issue paper for a C–TPAT supervisor's approval, and the issue paper is stored separately from the Security Link Portal on an internal C–TPAT SharePoint, which is only accessible by appropriate CBP employees and supervisors.

Vetting results containing PII are not stored in the C–TPAT Security Link Portal. When a query reveals derogatory information about a business applicant or partner, the SCSS makes a notation on the internal portion of the C–TPAT Security Link Portal indicating the existence of derogatory information and a citation to the appropriate records. For instance, if a query of an applicant in TECS results in derogatory information, the TECS ID is used as an identifier for the record in the C–TPAT Security Link Portal, rather than the contents of the TECS record. However, specific details regarding the incident or violation giving rise to the unfavorable analysis will be maintained within the C–TPAT SharePoint site and the relevant source system. The SCSS is responsible for vetting all C–TPAT applicants, and conducts this vetting of business entities every 6–12 months to ensure continued compliance.

Consistent with DHS's information sharing mission, information stored in DHS/CBP–018 Customs—Trade Partnership Against Terrorism (C–TPAT) System may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, elsewhere in the **Federal Register**. This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/CBP–018 Customs—Trade Partnership Against Terrorism (C–TPAT) System of Records. In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–018.

SYSTEM NAME:

DHS/CBP–018 Customs—Trade Partnership Against Terrorism (C–TPAT)

SECURITY CLASSIFICATION:

Unclassified, for official use only, law enforcement sensitive.

SYSTEM LOCATION:

Records are maintained at CBP Headquarters, Washington, DC and field offices in C–TPAT's Security Link Portal and a CBP collaborative intranet.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including Points of Contact (POC), owners, and others associated with prospective, ineligible, current, or former C–TPAT business

entities; individuals associated with the supply chain of such C–TPAT business entities; and individuals associated with business entities in foreign governments secure supply chain programs that have been recognized by CBP, through harmonization, a mutual recognition arrangement, or comparable arrangement, as being compatible with C–TPAT.

CATEGORIES OF RECORDS IN THE SYSTEM:

At the Application level, information is collected from the applicant about itself and those members of its international supply chain. Pre-set fields of business-identifying information within the company profile portion of the online application include:

- Business Entity Type;
- Application Exception Token;
- Legal Business Name;
- Other Name(s) by which the Business is known (i.e., ''Doing Business As''), if applicable;
- Business Telephone;
- Business Fax;
- Business Web site address;
- Business history;
- Physical Address(es);
- Mailing Address(es);
- Owner Type: (e.g., Corporation\Partnership\Sole Proprietor, etc.);
- Years in Business;
- Number of Employees;
- Business Points of Contacts;
- First Name;
- Last Name;
- Title;
- Email Address (also used to log in to the Security Link Portal);
- Password;
- Telephone Number;
- Contact Type;
- U.S. Social Security Numbers (as volunteered by sole proprietors as their tax identification number);
- Internal Revenue Service Business Identification Numbers;
- Customs assigned identification numbers (Importers of Record (IOR) number; Manufacturer Identification Numbers (MID) and Broker/Filer codes, etc.);
- Issue Papers, including information regarding whether the applicant is eligible for C–TPAT membership or source record numbers for such information;
- Narrative description of supply chain security procedures for applicant and other entities in applicant's supply chain;
- Validation supporting documentation (e.g., bills of lading; audits—internal & external; proof of background checks; contractual obligations; via a letter from a senior business partner officer attesting to compliance; statements demonstrating compliance with C–TPAT security criteria or an equivalent World Customs Organization accredited security program administered by a foreign customs authority; importer security questionnaire); and
- Account Status.

Information received from and confirmed to countries with which CBP has a Mutual Recognition Arrangement (MRA) includes:

- Legal Business Name;
- Other Name(s) by which the Business is known (i.e., ''Doing Business As''), if applicable;
- Company Type;
- Date Partner Certified;
- Account Status;
- Vetting Status;
- Date Validation Completed;
- SCSS Name;
- Office Assigned Name;
- Mutual Recognition Country;
- Business identifying numbers, e.g.:
  - Standard Carrier Alpha Code (SCAC);
  - IOR;
  - MID;

By Applicant request, information received from, and forwarded to, foreign secure supply chain programs pursuant to a harmonization program may include, but is not limited to:

- Legal Name;
- Doing Business As;
- Telephone Number;
- Fax Number;
- Web site;
- Owner Type;
- Business Start Date;
- Number of Employees;
- Brief Company History;
- Primary Address, Type;
- Primary Address, Name;
- Primary Address, Country;
- Primary Address, Street Address;
- Primary Address, City;
- Primary Address, State/Province;
- Primary Address, Zip/Postal Code;
- Mailing Address:
  - Type;
  - Name;
  - Country;
  - Street Address;
  - City;
  - State/Province; and
  - Zip/Postal Code.
- Primary Contact:
  - Email Address;
  - Type;
  - Salutation;
  - First Name;
  - Last Name;
  - Title; and
  - Telephone Number.
- Partner Notifications;
- Number of Entries;
- U.S. Department of Transportation (DOT) Issued Number;
- U.S. National Motor Freight Traffic Association Issued;
- SCAC;
- Dun & Bradstreet Number;
- Services Offered;
- Driver Sources;
- Entries related to harmonization country;
- The entire Security Profile (Upon Request):
  - Account Number;
  - Risking Status;
  - MSR Status;
  - Validation Type;
  - Validation Closed Date;
  - Validation Status;
  - Validation Type Verification (Government Contact);
  - Verification Type Start Date;
  - Verification Type: (phone, visit, mutual recognition);
  - Verification Visit address;
  - Business Type; and
  - Harmonization Host Program.
- Account Status;
- Vetting Status;
- Minimum Security Requirements/Security Profile Status;
- Validation Status; and
- Harmonization Status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system and program are authorized by 6 U.S.C. 901 note (Security and Accountability for Every Port Act of 2006 (SAFE Port Act), including 6 U.S.C. 961–973. Pilot programs enhancing secure supply chain practices related to C–TPAT are also authorized by Homeland Security Presidential Directive/HSPD–8, ''National Preparedness'' Section 22 (December 17, 2003).

PURPOSE(S):

The purpose of this system is to verify the identity of C–TPAT partners, determine enrollment level, and provide identifiable ''low risk'' entities with fewer random checks and facilitated processing. The information will be cross-referenced with data maintained in CBP's other cargo and enforcement databases and will be shared with other law enforcement systems, agencies or foreign entities, as appropriate, when related to ongoing investigations or operations. Information will be used to analyze, measure, monitor, report, and enhance business supply chains to permit facilitated processing of C–TPAT partner shipments by CBP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3). Any disclosure of information must be made consistent with the official duties of the person making the disclosure. The routine uses are as follows:

A. To the Department of Justice (DOJ), including the United States Attorneys Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individuals that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations.

H. To appropriate foreign governmental agencies or multilateral governmental organizations pursuant to an arrangement between CBP and a foreign government or multilateral governmental organization regarding supply chain security.

I. To an appropriate federal, state, local, territorial, tribal, or foreign governmental agencies or multilateral governmental organizations or other appropriate authority or entity when necessary to vet a C–TPAT applicant or validate a C–TPAT partner.

J. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be relevant in countering the threat or potential threat.

K. To a federal, state, tribal, or local agency, or other appropriate entity or individual, or foreign governments, in order to provide relevant information related to intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

L. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, or when the information is relevant and necessary to the protection of life or property.

M. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation.

N. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

O. To a federal, state, local, tribal, or foreign governmental agency or multilateral governmental organization for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

P. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital health interests of a data subject or other persons (e.g., to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk).

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by any of the information listed in the categories of records above.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

CBP is proposing the following retention schedule to the National Archives and Records Administration (NARA): Information stored in C–TPAT will be retained for the period during which the application is pending decision by CBP and for the period of active membership of the business entity, plus five years. Where information regarding the possible ineligibility of an applicant for C–TPAT membership is found, it will be retained in the C–TPAT system for an additional 25 years to assist with future vetting, or consistent with the applicable retention period for the System of Records from which such information was derived, whichever is longer.

SYSTEM MANAGER AND ADDRESS:

C–TPAT Director, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229; (202) 344–2619.

NOTIFICATION PROCEDURE:

The C–TPAT Security Link Portal provides access to the information an applicant or partner submitted. The C–TPAT partner interface allows participants to access and change the information they have provided at any time by accessing their business identifying information and C–TPAT profile through secure login procedures. C–TPAT Partners access the C–TPAT Security Link Portal via *https://ctpat.cbp.dhs.gov*.

Through the Security Link Portal, C–TPAT partners have a direct messaging option where they may communicate with their assigned SCSS if they believe CBP has acted upon inaccurate or erroneously provided information. If this method is unsuccessful and C–TPAT facilitated processing is denied or removed, within 30 days of notification the entity may make written inquiry regarding such denial or removal. The applicant should provide as much identifying information as possible regarding the business, in order to identify the record at issue. C–TPAT participants may provide CBP with additional information to ensure that the information maintained by CBP is accurate and complete. The submitter will receive a written response to each inquiry. If C–TPAT partnership is suspended or removed, the business may appeal this decision to CBP HQ, to the attention of the Executive Director, C–TPAT Program Division: Executive Director, Cargo and Conveyance Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 2.2A, Washington, DC 20229.

The Secretary of Homeland Security has exempted portions of this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS/CBP will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from the business; from CBP systems including, but not limited to, TECS, the Automated Targeting System (ATS), the Automated Commercial System (ACS); and from public sources. Information is also collected by the SCSS from the C–TPAT applicant and other businesses during the course of validating the business's supply chain and from foreign governments and multilateral governmental organizations with which CBP has entered into MRAs or other arrangements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption shall be asserted with respect to information requested from and provided by the C–TPAT applicant including, but not limited to, company profile, supply chain information, and other information provided during the application and validation process. CBP will not assert any exemptions for an individual's application data and final membership determination in response to a request from that individual. However, the Privacy Act requires DHS

to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that a law enforcement agency has sought particular records may affect ongoing law enforcement activities. As such, pursuant to 5 U.S.C. 552a(j)(2), DHS will claim exemption from sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from section (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, all other C–TPAT data, including information regarding the possible ineligibility of an applicant for C–TPAT membership discovered during the vetting process and any resulting issue papers, are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(2), information regarding the possible ineligibility of an applicant for C–TPAT membership discovered during the vetting process and any resulting issue papers are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H),(e)(4)(I); and (f). In addition, to the extent a record contains information from other exempt systems of records, CBP will rely on the exemptions claimed for those systems.

Dated: February 21, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–05674 Filed 3–12–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Request for Applicants for Appointment to the National Advisory Council.

SUMMARY: The Federal Emergency Management Agency (FEMA) is requesting individuals who are interested in serving on the National Advisory Council (NAC) to apply for appointment as identified in this notice. As provided for in the *Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA),* the NAC shall advise the Administrator of FEMA on all aspects of emergency management. The NAC shall incorporate State, local and Tribal government and private sector input in the development and revision of the national preparedness goal, the national preparedness system, the National Incident Management System, the National Response Framework, and other related plans and strategies. The NAC consists of up to 35 members, all of whom are experts and leaders in their respective fields. FEMA seeks to appoint individuals to nine positions on the Council that are open due to vacancy or term expiration on June 15, 2013.

DATES: Applications and nominations will be accepted until Friday, March 22, 2013, 5:00 p.m. EST.

ADDRESSES: Applications for membership should be submitted by:

- *Email: FEMA-NAC@fema.dhs.gov.*
- *Fax:* (540) 504–2331.
- *Mail:* Office of the National Advisory Council, Federal Emergency Management Agency (Room 722F), 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Alexandra Woodruff, Alternate Designated Federal Officer, The Office of the National Advisory Council, Federal Emergency Management Agency (Room 722F), 500 C Street SW., Washington, DC 20472–3100; telephone (202) 646–3746; fax (540) 504–2331; and email *FEMA-NAC@fema.dhs.gov.* For more information on the NAC, please visit *http://www.fema.gov/about/national-advisory-council.*

SUPPLEMENTARY INFORMATION: The NAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. (Pub. L. 92–463). As required by PKEMRA, the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters. FEMA is requesting individuals who are interested in serving on the NAC to apply for appointment. The terms for seven positions on the Council will expire June 15, 2013 in the following discipline areas: Emergency Management Field (one representative appointment), State Non-Elected Officials (one representative appointment), Standards Setting and Accrediting (one representative appointment), Public Health (one Special Government Employee (SGE) appointment), Functional Accessibility (one representative appointment), Emergency Medical Providers (one SGE appointment), and Tribal Non-Elected Officials (one representative appointment). FEMA seeks to appoint individuals to these positions for three-year terms. There are two vacancies with terms ending June 15, 2014 in the disciplines of Tribal Elected Officials (one representative appointment) and Emergency Response (one representative appointment). FEMA seeks to appoint individuals to serve the remainder of these terms. The position for Tribal Elected Officials (one representative appointment) is currently vacant with a term ending June 15, 2014. FEMA seeks to appoint an individual to serve the remainder of this term. The Administrator may appoint additional candidates to serve as FEMA Administrator Selection (either representative or SGE) for three-year terms. Additionally, there is an *Ex Officio* position for a representative from the U.S. Department of Defense.

Individuals interested in serving on the NAC are invited to apply for appointment by submitting a Resume or Curriculum Vitae (CV) to the Office of the NAC as listed in the **ADDRESSES** section of this notice. Letters of recommendation may also be provided, but are not required. There is no application form. However, applications/nominations must include the following information: The applicant's full name, home and business phone numbers, preferred email address, home and business mailing addresses, current position title & organization, and the discipline area of interest (i.e., Emergency Management). Current Council members whose terms are ending should notify the Office of the NAC of their interest in reappointment in lieu of submitting a new application, and if desired, provide updated application materials for consideration.

Appointees may be designated as a SGE as defined in section 202(a) of title 18, United States Code, or as a Representative appointment. Candidates selected for appointment as SGEs are required to complete a Confidential Financial Disclosure Form (Office of Government Ethics (OGE) Form 450). This form can be obtained by visiting the Web Site of the Office of Government Ethics (*http://www.oge.gov*), or by contacting the Office of the NAC. Please do not submit this form with your application. Contact information is provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

The NAC will meet in person approximately three times a year. Members may be reimbursed for travel and per diem, and all travel for Council business must be approved in advance by the Designated Federal Officer. NAC members are expected to serve on one of the four NAC Subcommittees, which regularly meet by teleconference between the in person meetings. The Department of Homeland Security (DHS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions. Registered lobbyists and current FEMA employees, Disaster Assistance Employees, Reservists, Contractors, and potential Contractors will not be considered for membership.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–05659 Filed 3–12–13; 8:45 am]

BILLING CODE 9111–48–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

Inter-American Foundation Board Meeting.

TIME AND DATE: March 25, 2013, 9:00 a.m.–1:00 p.m.

PLACE: 1331 Pennsylvania Ave. NW., 12th floor north, Suite 1200, Washington, DC 20004.

STATUS: Open session.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the December 10, 2012, Meeting of the Board of Directors.
- Management Report.
- Remarks by Ricardo Zúñiga, Special Assistant to the President and Senior Director for Western Hemisphere Affairs, National Security Council.
- Report from trip to Guatemala.

PORTIONS TO BE OPEN TO THE PUBLIC:

- Approval of the Minutes of the December 10, 2012, Meeting of the Board of Directors.
- Management Report.
- Remarks by Ricardo Zúñiga, Special Assistant to the President and Senior Director for Western Hemisphere Affairs, National Security Council.
- Report from trip to Guatemala.

CONTACT PERSON FOR MORE INFORMATION: Mara Q. Campbell, Associate General Counsel, 202.683.7118.

Mara Q. Campbell,

Associate General Counsel.

[FR Doc. 2013–05919 Filed 3–11–13; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Request for Nominations to Serve on Board of Trustees for the Cobell Education Scholarship Fund

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Claims Resolution Act of 2010, Public Law 111–291, 124 Stat. 3064, and the Class Action Settlement Agreement (''Agreement''), *Cobell v. Salazar,* the Secretary of the Interior requests nominations of candidates to serve on the Board of Trustees (''Board'') for the Cobell Education Scholarship Fund. The Board serves as an oversight body to the non-profit organization and must consist of no more than five members that will include two representatives selected by the Secretary and two representatives selected by the Plaintiff, and one representative selected by the non-profit organization. The Secretary will consider nominations received in response to this Request for Nominations. The **SUPPLEMENTARY INFORMATION** section of this notice provides additional information.

DATE: Nominations must be received on or before April 12, 2013.

ADDRESSES: Please submit nominations to Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240 or email to *lizzie_marsters@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Lizzie Marsters, Chief of Staff to the Deputy Secretary, at *lizzie_marsters@ios.doi.gov* or call 202–219–7499.

SUPPLEMENTARY INFORMATION: The Board of Trustees for the Cobell Education Scholarship Fund is being established to fulfill the requirements set forth in the Claims Resolution Act of 2010, Public Law 111–291, 124 Stat. 3064. Specifically, the Claims Resolution Act of 2010 states ''the 2 members of the special board of trustees shall be selected by the Secretary under paragraph G.3. of the Settlement shall be selected only after consultation with, and after considering the names of possible candidates timely offered by, federally recognized tribes.'' Pursuant to the Agreement, the Secretary is to select one non-profit organization among those entities nominated by the Plaintiffs to administer the funds provided for in the Agreement for the Cobell Education Scholarship Fund and to establish a Scholarship Program to provide financial assistance to Native American students to defray the cost of attendance at both post-secondary vocational certifications and institututions of higher education. The Board shall oversee the management of the Cobell Education Scholarship Fund. The Cobell Education Scholarship Fund was created as an incentive to participate in the Land Buy-Back Program for Indian Nations (Buy-Back Program), the $1.9 billion land consolidation program authorized by the Claims Resolution Act of 2010. The Buy-Back Program contributes up to $60 million of the $1.9 billion to the Cobell Education Scholarship Fund based on the dollar amount of land purchased through the Buy-Back Program. In addition to the maximum $60 million that can be contributed to the Fund, the principal amount of any class member funds in an IIM (Individual Indian Monies) account, for which the whereabouts are unknown and left unclaimed for five years after Final Approval of the Settlement, will be transferred to the organization selected to administer the Cobell Education Scholarship Fund and will be governed by the Board of Trustees. Similarly, any leftover funds from the administration of the Settlement Fund (after all payments under the Settlement are made) will be contributed towards the Cobell Education Scholarship Fund.

Objective and Duties. The Board will be responsible for the oversight and supervision of the activities of the non-profit organization. The duties of the Board include, but are not limited to, appointing an auditor to review the finances and procedures of the organization, approving policies and objectives regarding the Cobell Education Scholarship Fund and Scholarship program, approving an investment policy and approving priorities and criteria for awarding scholarships. The Board shall develop and adopt a charter outlining the Board of Trustees' role and responsibilities overseeing the non-profit organization and the administration and management of the Cobell Education Scholarship Fund and the Scholarship Program. The Board or Trustees shall be empowered by majority vote to remove the funds from the selected organization for any

reason, including mismanagement, and to select a new entity.

Membership. The members of the board shall serve for an initial term of four years and may be reappointed for an unlimited number of successive terms. A member may be removed for cause by the appointing entity and any vacancy shall be filled in the same manner as the original appointment. No member of the Board shall have had any contracts to transact business with the non-profit organization within a period of two calendar years and will disclose any appearance of a conflict of interest. Members will serve without compensation, but will be reimbursed for reasonable travel expenses related to the performance of their duties as members of the Board.

Nomination Information. The best boards are a mix of characteristics, skills, experiences, and diversity. Individuals who are nominated should be prepared to contribute a significant amount of time and effort to further the goals of the scholarship fund; should have demonstrated notable or significant achievements in business, finance, education or public service; should possess the requisite intelligence, education and experience to make a significant contribution to the Board; have the highest ethical standards, free of significant conflicts of interest that might not allow the proper execution of the duties of a member of the Board; and have a strong commitment to serving the interests of Native American students. Please send curriculum vitae, a letter of intent which indicates a willingness to serve, and a 250-word statement which supports your candidacy to Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240 or email to *lizzie_marsters@ios.doi.gov.*

Dated: March 7, 2013.

David Hayes,

Deputy Secretary.

[FR Doc. 2013–05810 Filed 3–12–13; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Cedarville Rancheria—Liquor Licensing Ordinance of the Cedarville Rancheria, Ordinance No. 2012–05

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Licensing Ordinance of the Cedarville Rancheria, Ordinance No. 2012–05. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Indian Country of the Cedarville Rancheria. The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Cedarville Rancheria. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their jurisdiction, and at the same time will provide an important source of revenue, strengthen the tribal government and improve the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective March 13, 2013.

FOR FURTHER INFORMATION CONTACT: Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825, Phone: (916) 978–6067; Fax: (916) 916–6099: or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; Telephone (202) 513–7640.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Cedarville Rancheria Community Council adopted this Ordinance by Cedarville Rancheria Resolution #12–04 on April 14, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Cedarville Rancheria Community Council duly adopted the Liquor Licensing Ordinance of the Cedarville Rancheria, Ordinance No. 2012–05 by Cedarville Rancheria Resolution #12–04 on April 14, 2012.

Dated: March 5, 2013.

Kevin K. Washburn

Assistant Secretary—Indian Affairs.

The Liquor Licensing Ordinance of the Cedarville Rancheria, Ordinance No. 12–05, shall read as follows:

Chapter 01—Introduction

Section 01.010—Title. This Ordinance shall be known as the Liquor Control Ordinance of the Cedarville Rancheria.

Section 01.020—Authority. This Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161), and Article VIII, Section 2 of the Constitution and Bylaws of the Cedarville Rancheria, Modoc County, Cedarville, California.

Section 01.030—Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Cedarville Rancheria, Modoc County, California. The enactment of a Tribal ordinance governing liquor possession and sale on the Reservation will increase the ability of the Tribal government to control Reservation liquor distribution and possession, and, at the same time, will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 01.040—Effective Date. This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Chapter 02—General Provisions

02.010—Short title. This ordinance shall be known and cited as the Cedarville Rancheria Liquor Licensing Ordinance.

02.020—Purpose. The purpose of this Ordinance is to prohibit the importation, manufacture, distribution and sale of alcoholic beverages on the Cedarville Rancheria except pursuant to a license issued by the Executive Committee under the provisions of this ordinance.

02.030—Sovereign immunity preserved. Nothing in this ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the Cedarville Rancheria. No officer or employee of the Cedarville Rancheria is authorized nor shall he/she attempt to waive the immunity of the Tribe under the provisions of this ordinance unless such officer or employee has an express and explicit written authorization from the Cedarville Rancheria Community Council pursuant to Article VIII, Section 1(f) the Constitution and Bylaws of the Cedarville Rancheria, Modoc County, Cedarville, California.

02.040—Applicability within the Reservation. This ordinance shall apply to all persons within the exterior boundaries of the Cedarville Rancheria consistent with the applicable federal Indian liquor laws.

02.050—Possession of alcoholic beverages. Nothing in this Ordinance shall be interpreted as prohibiting the possession, transportation or

consumption of alcoholic beverages within the boundaries of the Cedarville Rancheria. Possession, transportation and/or consumption of alcoholic beverages within the exterior boundaries of the Reservation in conformity with the provisions of Federal law and in conformity with the laws of the State of California relating to the possession, transportation, or consumption of alcoholic beverages is expressly permitted under this Ordinance.

02.060—Interpretation and findings. The Executive Committee in the first instance may interpret any ambiguities contained in this ordinance.

02.070—Conflicting provisions. Whenever any conflict occurs between the provisions of this ordinance or the provisions of any other ordinance of the Tribe, the stricter of such provisions shall apply.

02.080—Application of 18 U.S.C. 1161. The consumption, importation, manufacture, distribution and sale of alcoholic beverages on the Cedarville Rancheria shall be in conformity with this Ordinance and in conformity with the laws of the State of California as that phrase or term is used in 18 U.S.C. 1161.

Chapter 03—Definitions

03.010—Interpretation. In construing the provisions of this ordinance the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise.

03.020—Alcohol. Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, in any form, and regardless of source or the process used for its production.

03.030—Alcoholic beverage. Alcoholic beverage includes all alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. It shall be interchangeable in this ordinance with the term liquor.

03.040—Beer. Beer means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, and also includes sake, otherwise known as Japanese rice wine.

03.050—Distilled spirits. Distilled spirits means any alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

03.060—Importer. Importer means any person who introduces alcohol or alcoholic beverages into the Cedarville Rancheria from outside the exterior boundaries of the Reservation for the purpose of sale or distribution within the Reservation, provided however, the term importer as used herein shall not include a wholesaler licensed by any state or tribal government selling alcoholic beverages to a seller licensed by a state or tribal government to sell at retail.

03.070—Liquor license. Liquor license means a license issued by the Cedarville Rancheria Executive Committee under the provisions of this ordinance authorizing the sale, manufacture, or importation of alcoholic beverages on or within the Reservation consistent with federal law.

03.080—Manufacturer. Manufacturer means any person engaged in the manufacture of alcohol or alcoholic beverages.

03.090—Person. Person means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group, whether recognized by the United States Government or otherwise. The term shall also include the businesses of the Tribe. It shall be interchangeable in this ordinance with the term ''seller'' or ''licensee.''

03.100—Reservation. Reservation means all lands within the exterior boundaries of the Cedarville Rancheria and such other lands as may hereafter be acquired by the Tribe, whether within or without said boundaries, under any grant transfer, purchase, gift, adjudication, executive order, Act of Congress, or other means of acquisition.

03.110—Sale. Sale means the exchange of property and/or any transfer of the ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. It includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer, or consumer but title is retained by the vendor, retailer, manufacture, or wholesaler, as security for the payment of the purchase price. Specifically, it shall include any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages, or soliciting or receiving such beverages.

03.120—Seller. Seller means any person who, while within the exterior boundaries of the Reservation, sells, solicits or receives an order for any alcohol, alcoholic beverages, distilled spirits, beer, or wine.

03.130—Executive Committee. Executive Committee means the Cedarville Rancheria Executive Committee.

03.140—Tribe. Tribe means the Cedarville Rancheria.

03.150—Wine. Wine means the product obtained from the normal alcoholic fermentation of the juice of the grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made, and other rectified wine products.

Chapter 04—Prohibition of the Unlicensed Sale of Liquor

04.010—Prohibition of the unlicensed sale of liquor. No person shall import for sale, manufacture, distribute or sell any alcoholic beverages within the Reservation without first applying for and obtaining a written license from the Executive Committee issued in accordance with the provisions of this ordinance.

04.020—Authorization to sell liquor. Any person applying for and obtaining a liquor license under the provisions of this ordinance shall have the right to engage only in those liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

04.030—Types of licenses. The Executive Committee shall have the authority to issue the following types of liquor licenses within the reservation:

A. Retail on-sale general license: means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license.

B. Retail on-sale beer and wine license means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on

the premises or at the location designated in the license.

C. Retail off-sale general license means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

D. Retail off-sale beer and wine license means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

E. Manufacturer's license means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the reservation.

Chapter 05—Application for License

05.010—Application form and content. An application for a license shall be made to the Executive Committee and shall contain the following information:

A. The name, address and phone number of the applicant. In the case of a corporation the application form will include the names and addresses of all of the principal officers, directors and stockholders of the corporation. In the case of a partnership, the application form will include the name and address of each partner.

B. The specific area, location and/on premises for which the license is applied for.

C. The type of liquor transaction applied for (i.e. retail on-sale general license, etc.).

D. Whether the applicant has a state liquor license.

E. A statement by the applicant to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this ordinance or any of the provisions of the California Alcoholic Beverage Control Act.

F. The signature and fingerprint of the applicant. In the case of a partnership, the signature and fingerprint of each partner will be submitted. In the case of a corporation, the signature and fingerprint of each of the officers of the corporation under the seal of the corporation will be included.

G. The application shall be verified under oath, notarized and accompanied by the license fee required by this ordinance.

05.020—Fee accompanying application. The Executive Committee shall by resolution establish a fee schedule for the issuance, renewal and transfer of the following types of licenses:

A. Retail on-sale general license;

B. Retail on-sale beer and wine license;

C. Retail off-sale general license:

D. Retail off-sale beer and wine liquor; and

E. Manufacturer's license.

05.030—Investigation; denial of application. Upon receipt of an application for the issuance, transfer or renewal of' a license and the application fee required herein, the Executive Committee shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this ordinance have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The Executive Committee shall deny an application for issuance, renewal or transfer of a license if either the applicant on the premises for which a license is applied for does not qualify for a license under this ordinance or if the applicant has misrepresented any facts in the application or given any false information to the Executive Committee in order to obtain a license.

The Executive Committee further may deny any application for issuance, renewal or transfer of a license if the Executive Committee cannot make the findings required by Section 06.20 of this Ordinance or the Executive Committee finds that the issuance of such a license would tend to create a law enforcement problem, or if issuance of said license would be a detriment to the health, safety and welfare of the Tribe or its members.

Chapter 06—Issuance, Renewal and Transfer of Licenses

06.010—Public hearing. Upon receipt of an application for issuance, renewal or transfer of a license, and the payment of all fees required under this ordinance, the Secretary of the Executive Committee shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least ten (10) calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall he given to the public by publication in a newspaper of general circulation sold on the Reservation. The notice published in the newspaper shall include the name of the applicant and the type of license applied for and a general description of the area where liquor will be sold. At the hearing, the Executive Committee shall hear from any person who wishes to speak for or against the application. The Executive Committee shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

06.020—Executive Committee action on application. Within thirty (30) days of the conclusion of the public hearing, the Executive Committee shall act on the matter. The Executive Committee shall have the authority to deny, approve, or approve with conditions the application. Before approving the application, the Executive Committee shall find: (1) That the site for the proposed premises has adequate parking, lighting, security and ingress and egress so as not to adversely affect adjoining properties or businesses, and (2) that the sale of alcoholic beverages at the proposed premises is consistent with the Tribe's Zoning Data. Upon approval of an application, the Executive Committee shall issue a license to the applicant in a Form to be approved from time to time by the Executive Committee by resolution. All businesses shall post their Tribal liquor licenses issued under this ordinance in a conspicuous place upon the premises where alcoholic beverages are sold, manufactured or offered for sale.

06.030—Multiple locations. Each license shall be issued to a specific person. Separate licenses shall be issued for each of the premises of any business establishment having more than one location.

06.040—Term of license/Temporary licenses. All licenses issued by the Executive Committee shall be issued on a calendar year basis and shall be renewed annually; provided, however, that the Executive Committee may issue special licenses for the sale of alcoholic beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion at a fee to be established by the Executive Committee by resolution.

06.050—Transfer of licenses. Each license issued or renewed under this ordinance is separate and distinct and is transferable from the licensee to another person and/or from one premises to another premises only with the approval of the Executive Committee. The Executive Committee shall have the authority to approve, deny, or approve with conditions any application for the transfer of any license. In the case of a transfer to a new person, the application for transfer shall contain all of the information required of an original applicant under Section 05.010 of this ordinance. In the case of a transfer to a new location, the application shall contain all exact description of the location where the alcoholic beverages are proposed to be sold.

Chapter 07—Revocation of Licenses

07.010—Revocation of licenses. The Executive Committee shall revoke a license upon any of the following grounds.

A. The misrepresentation of a material fact by an applicant in obtaining a license or a renewal thereof.

B. The violation of any condition imposed by the Executive Committee on the issuance, transfer or renewal of a license.

C. A plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors.

D. The violation of any tribal ordinance.

E. The failure to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any immediately adjacent area leased, assigned or rented by the licensee within a reasonable time after receipt of a notice to make such corrections has been received from the Executive Committee or its authorized representative.

07.020—Accusations. The Executive Committee, on its own motion through the adoption of an appropriate resolution meeting the requirements of this section, or any person may initiate revocation proceedings by filing an accusation with the Secretary of the Executive Committee. The accusation shall be in writing and signed by the maker, and shall state facts showing that there are specific grounds under this ordinance which would authorize the Executive Committee to revoke the license or licenses of the licensee against whom the accusation is made. Upon receipt of an accusation, the Secretary of the Executive Committee shall cause the matter to be set for a hearing before the Executive Committee. Thirty (30) days prior to the date set for the hearing, the Secretary shall mail a copy of the accusation along with a notice of the day and time of the hearing before the Executive Committee. The notice shall command the licensee to appear and show cause why the licensee's license should not be revoked. The notice shall state that the licensee has the right to file a written response to the accusation, verified under oath and signed by the licensee ten (10) days prior to the hearing date.

07.030—Hearing. Any hearing held on any accusation shall be held before a majority of the Executive Committee under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation, including the Tribe, shall have the right to present witnesses to testify and to present written documents in support of their positions to the Executive Committee. The Executive Committee shall render its decision within sixty (60) days after the date of the hearing. The decision of the Executive Committee shall be final and non-appealable.

Chapter 08—Enforcement

08.010—Right to inspect. Any premises within the area under the jurisdiction of this Ordinance on which liquor is sold or distributed shall be open for inspection by representatives of the Executive Committee at all reasonable times during business hours for the purposes of ascertaining whether the rules and regulations of this Ordinance are being complied with.

08.020—General penalties. Any person adjudged to be in violation of this ordinance shall be subject to a civil penalty of not more than Five Hundred Dollars ($500.00) for each such violation. The Executive Committee may adopt by resolution a separate schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed in conformity with federal law by separate Chapter or provision of this Ordinance or by a separate ordinance of the Cedarville Rancheria Tribal Code.

08.020—Initiation of action. Any violation of this ordinance shall constitute a public nuisance. The Executive Committee may initiate and maintain an action in tribal court, or, if the tribal court does not have jurisdiction over the action, the United States District Court for the Eastern District of California shall have jurisdiction to abate and permanently enjoin any nuisance declared under this ordinance. Any action taken under this section shall be in addition to any other penalties provided for this ordinance.

Section 08—Severability. If any part or provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and affect. To this end the provisions of this ordinance are severable.

[FR Doc. 2013–05811 Filed 3–12–13; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Fee Rate

Correction

In notice document 2013–05334, appearing on page 14821 in the issue of Thursday, March 7, 2013, make the following correction:

On page 14821, in the second column, in the eighth line from the bottom of the page, ''Dated: March 4, 3013.'' should read ''Dated: March 4, 2013.''.

[FR Doc. C1–2013–05334 Filed 3–12–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Public Scoping Meetings for the Pojoaque Basin Regional Water System Environmental Impact Statement, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation is preparing an environmental impact statement for the Pojoaque Basin Regional Water System. As part of that process, Reclamation will host five public scoping meetings to provide information on the project and to solicit input on the scope of the document, alternatives, concerns, and issues to be addressed in the environmental impact statement.

DATES: Public scoping meetings will be held from 6:00 p.m. to 8:00 p.m. on the following dates:

- Monday, April 1, 2013, in Tesuque, New Mexico.
- Tuesday, April 2, 2013, in Pojoaque, New Mexico.
- Wednesday, April 3, 2013, in Santa Fe, New Mexico.
- Thursday, April 4, 2013, in Española, New Mexico.
- Tuesday, April 9, 2013, in Taos, New Mexico.

The scoping period will be open from March 13, 2013 to May 3, 2013.

ADDRESSES: Public scoping meetings will be held at the following locations:

- Tesuque—Tesuque Valley Elementary School Cafeteria, 1555

Bishop's Lodge Road, Tesuque, New Mexico, 87574.

- Pojoaque—Pojoaque Valley School District Campus, West Wing Conference Room, 1574 State Road 502 West, Santa Fe, New Mexico 87506.
- Santa Fe—Santa Fe Community College, Jemez Rooms 1&2, 6401 Richards Avenue, Santa Fe, New Mexico 87508.
- Española—Northern New Mexico College, Cafeteria, 921 N. Paseo de Oñate, Española, New Mexico 87532.
- Taos—Taos Convention Center, Rio Grande Hall, Room A, 120 Civic Plaza, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Ms. Molly Thrash, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico, 87102; telephone (505) 462–3702; facsimile (505) 462–3780; email *sthrash@usbr.gov.* Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation is the lead Federal agency for preparation of the Pojoaque Basin Regional Water System Environmental Impact Statement (EIS). As such, Reclamation published a Notice of Intent to Prepare an EIS on February 24, 2012 (77 FR 11155). The U.S. Army Corps of Engineers, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, Indian Health Service, New Mexico Department of Transportation, New Mexico Office of the State Engineer, County of Santa Fe, City of Santa Fe, and the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque have been invited to participate as cooperating agencies. Other entities may be considered as necessary during the EIS process.

Reclamation is proposing to plan, design, and construct the Pojoaque Basin Regional Water System in accordance with the Aamodt Litigation Settlement Act, which is Title VI of the Claims Resolution Act of 2010 (Pub. L. 111–291, Title VI; 124 Stat. 3065). The proposed project would divert, treat, and distribute potable water to the Pueblo and non-Pueblo residents of the Pojoaque Basin. The Regional Water System would consist of surface water diversion and water treatment facilities within the boundaries of San Ildefonso Pueblo on the Rio Grande and storage tanks, transmission and distribution pipelines, and aquifer storage and recovery well fields that would supply up to 4,000 acre-feet of water annually to customers within the Pojoaque Basin.

Additional Information on the project is available at the project Web site at *PojoaqueBasinEIS.com.*

Public Scoping

Scoping is an early, ongoing, and open public process for determining the relevant issues to be addressed in the EIS and for identifying any significant issues and suggested alternatives related to the proposed Federal action.

Public comments on the scope and content of the EIS may be provided at the public meetings, submitted online through the project Web site, sent via email or facsimile, or mailed to the address shown below. To be most effectively considered, comments should be submitted by May 3, 2013.

Public comments and/or requests to be added to the project mailing list will be accepted at all of the public scoping meetings or by any of the methods shown below:

- *Email: PojoaqueBasinEIS@usbr.gov.*
- *Facsimile:* (505) 462–3780.
- *Web site: PojoaqueBasinEIS.com.*
- *Address:* Bureau of Reclamation, Albuquerque Area Office, Suite 100 (ALB–842), 555 Broadway NE., Suite 100, Albuquerque, New Mexico, 87102.

In addition to the public scoping meetings described above, Reclamation may host additional scoping meetings with Pueblo members at or near each of the four Pueblos. Government-to-government consultation will continue with the Pueblo governments and coordination will continue with other Federal and State agencies.

Special Assistance for Public Meetings

If special assistance is required to participate in a particular scoping meeting, please contact Ms. Molly Thrash at (505) 462–3702, or via email at *sthrash@usbr.gov.* A telephone device for the hearing impaired is available at 1–800–877–8339. Please provide notification as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in any communication, you should be aware that your entire comments—including your personal identifying information—may be made publicly available at any time. While you can ask us in your communication to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 16, 2013.

Larry Walkoviak,

Regional Director—Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 2013–05604 Filed 3–12–13; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Application; Meridian Medical Technologies

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on January 8, 2013, Meridian Medical Technologies, 2555 Hermelin Drive, St. Louis, Missouri 63144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company manufactures a product containing morphine in the United States. The company exports this product to customers around the world. The company has been asked to ensure that its product sold to European customers meets standards established by the European Pharmacopeia, which is administered by the Directorate for the Quality of Medicines (EDQM). In order to ensure that its product will meet European specifications, the company seeks to import morphine supplied by EDQM to use as reference standards. This is the sole purpose for which the company will be authorized by DEA to import morphine.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance listed in schedule II, which falls under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 12, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substances in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: March 7, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–05793 Filed 3–12–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Registration: Hospira Inc.

By Notice dated December 14, 2012, and published in the **Federal Register** on December 21, 2012, 77 FR 75670, Hospira Inc., 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in schedule II.

The company plans to import Remifentanil for use in dosage form manufacturing.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Hospira Inc. to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Hospira Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: March 7, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–05794 Filed 3–12–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration; Johnson Matthey, Inc., Pharmaceuticals Materials

By Notice dated November 1, 2012, and published in the **Federal Register** on November 9, 2012, 77 FR 67397, Johnson Matthey, Inc., Pharmaceuticals Materials, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

The Thebaine (9333) will also be used to manufacture other controlled substances for sale in bulk to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey Inc., Pharmaceuticals Materials to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey Inc., Pharmaceuticals Materials to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 27, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–05799 Filed 3–12–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Clubs Study

ACTION: Notice; correction.

SUMMARY: The Department of Labor published a document in the **Federal Register** of February 26, 2013, concerning request for comments on site visits to job clubs. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Contact Ben Seigel by telephone at 202–693–6032 (this is not a toll-free number) or by email at *CFBNP@dol.gov.*

Correction

In the **Federal Register** of February 26, 2013, in FR Doc. 2013–04391, on page 13086, in the second column, correct the **DATES** caption to read:

DATES: Written comments must be submitted to the office listed in the addressee section on or before April 27, 2013.

Signed at Washington, DC, this 5th day of March, 2013.

Irasema Garza,

Acting Assistant Secretary for Policy, U.S. Department of Labor .

[FR Doc. 2013–05775 Filed 3–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications for the Workforce Data Quality Initiative

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY–12–07.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor, announces the availability of approximately $6 million for grants to State Workforce Agencies (SWA) to develop the Workforce Data Quality Initiative (WDQI).

Grants awarded will provide SWAs the opportunity to develop or expand State workforce longitudinal administrative data systems. These State longitudinal data systems will, at a minimum, include information on programs that provide training, employment services, and unemployment insurance; connect with education data contained in Statewide Longitudinal Data Systems (SLDS) databases; be linked longitudinally at the individual level to allow for enhanced opportunity for evaluation of federally and State-supported education programs; and lead to better information for customers and stakeholders of the workforce system. Where such longitudinal systems do not exist or are in early development, WDQI grant assistance may be used to design and develop these systems. WDQI grant assistance can also be used to improve upon existing State longitudinal systems. Current round one WDQI grant recipients who were awarded under solicitation SGA/DFA PY 09–10 and states that currently do not have a WDQI grant are eligible for this competition.

The complete SGA and any subsequent SGA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications under this announcement is April 25, 2013. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Ariam Ferro, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3968.

Signed March 5, 2013 in Washington, DC

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2013–05745 Filed 3–12–13; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13–023]

Aerospace Safety Advisory Panel; Meeting.

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Wednesday April 3, 2013, 11:00 a.m. to 12:00 p.m., Local Time.

ADDRESSES: NASA Goddard Space Flight Center, 8800 Greenbelt Road, Bldg 8, Room N303, Greenbelt, MD 20771–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Harmony Myers, Aerospace Safety Advisory Panel Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–1857.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its Second Quarterly Meeting for 2013. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight.

The agenda will include: James Webb Space Telescope Overview, Commercial Crew Update, International Space Station Update, and Explorations Systems Development Update. The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch at *susan.burch@nasa.gov* or by telephone at (202) 358–0550 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Crystal McCrimmon at 301–286–6296 or via email at *crystal.d.mccrimmon@nasa.gov.* U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Crystal McCrimmon. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–05689 Filed 3–12–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts 178th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506. Agenda times are approximate.

DATES: March 29, 2013 from 9:00 a.m. to 11:30 a.m. in Room M–09.

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: The meeting, on Friday, March 29th will be open to the public on a space available basis. The meeting will begin with opening remarks, swearing in of new Council members, and voting on recommendations for funding and rejection and guidelines, followed by updates by the Acting Chairman. There also will be the following presentations (times are approximate): From 9:45 a.m. to 10:15 a.m.—NEA Arts Education Strategic Plan presentation and update (Ayanna Hudson, Director of Arts Education); from 10:15 a.m. to 10:45 a.m.—Public Affairs presentation on the latest edition of *NEA Arts;* from 10:45 a.m. to 11:15 a.m.—The Cleveland Orchestra/Community Outreach presentation (Joan Katz, Director of Education and Community Engagement and Joshua Smith, Principal Flute Player); from 11:15 a.m. to 11:30 a.m.—concluding remarks and voting results. The meeting will adjourn at 11:30 a.m.

For information about webcasting of the open session of this meeting, go to the Podcasts, Webcasts, & Webinars tab at *www.arts.gov.*

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the February 15, 2012 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

Dated: *March 7, 2013.*

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2013–05723 Filed 3–12–13; 8:45 am]

BILLING CODE 7537–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meetings; Cancellation Notice

OPIC March 13, 2013 Public Hearing Cancellation.

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 78, Number 41, Page 13912) on March 1, 2013. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 3 p.m., March 13, 2013 in conjunction with OPIC's March 21, 2013 Board of Directors meeting has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, or via email at *Connie.Downs@opic.gov.*

Dated: March 8, 2013.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2013–05887 Filed 3–11–13; 11:15 am]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15a–6; SEC File No. 270–0329, OMB Control No. 3235–0371.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15a–6, (17 CFR 240.15a–6), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15a–6 provides conditional exemptions from the requirement to register as a broker-dealer pursuant to Section 15 of the Exchange Act (15 U.S.C. 78o) for foreign broker-dealers that engage in certain specified activities involving U.S. persons. In particular, Rule 15a–6(a)(3) provides an exemption from broker-dealer registration for foreign broker-dealers that solicit and effect transactions with or for U.S. institutional investors or major U.S. institutional investors through a registered broker-dealer, provided that the U.S. broker-dealer, among other things, obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the registered broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Commission has ready access to information concerning these persons and their U.S. securities activities. Commission staff estimates that approximately 2,000 U.S. registered broker-dealers will spend an average of two hours of clerical staff time and one hour of managerial staff time per year obtaining the information required by the rule, resulting in a total aggregate burden of 6,000 hours per year for complying with the rule. Assuming an hourly cost of $63 [1] for a compliance clerk and $269 [2] for a compliance manager, the resultant total internal labor cost of compliance for the respondents is $790,000 per year (2,000 entities × ((2 hours/entity × $63/hour) + (1 hour per entity × $269/hour)) = $790,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in

[1] The hourly rate used for a compliance clerk was from SIFMA's *Office Salaries in the Securities Industry 2012,* modified by Commission staff to account for an 1,800 hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[2] The hourly rate used for a compliance manager was from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* modified by Commission staff to account for an 1,800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 6, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05754 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form N–14; OMB Control No. 3235–0336; SEC File No. 270–297.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–14 (17 CFR 239.23) is the form for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') of securities issued by management investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and business development companies as defined by Section 2(a)(48) of the Investment Company Act in: (1) A transaction of the type specified in rule 145(a) under the Securities Act (17 CFR 230.145(a)); (2) a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; (3) an exchange offer for securities of the issuer or another person; (4) a public reoffering or resale of any securities acquired in an offering registered on Form N–14; or (5) two or more of the transactions listed in (1) through (4) registered on one registration statement. The principal purpose of Form N–14 is to make material information regarding securities to be issued in connection with business combination transactions available to investors. The information required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of such information. Without the registration statement requirement, material information may not necessarily be available to investors.

We estimate that approximately 139 funds each file one new registration statement on Form N–14 annually, and that 58 funds each file one amendment to a registration statement on Form N–14 annually. Based on conversations with fund representatives, we estimate that the reporting burden is approximately 620 hours per respondent for a new Form N–14 registration statement and 300 hours per respondent for amending the Form N–14 registration statement. This time is spent, for example, preparing and reviewing the registration statements. Accordingly, we calculate the total estimated annual internal burden of responding to Form N–14 to be approximately 103,580 hours. In addition to the burden hours, based on conversations with fund representatives, we estimate that the total cost burden of compliance with the information collection requirements of Form N–14 is approximately $27,500 for preparing and filing an initial registration statement on Form N–14 and approximately $16,000 for preparing and filing an amendment to a registration statement on Form N–14. This includes, for example, the cost of goods and services purchased to prepare and update registration statements on Form N–14, such as for the services of outside counsel. Accordingly, we calculate the total estimated annual cost burden of responding to Form N–14 to be approximately $4,750,500.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under Form N–14 is mandatory. The information provided under Form N–14 will not be kept confidential. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 6, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05753 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30416; File No. 812–14076]

Blackstone Alternative Investment Funds, et al.; Notice of Application

March 7, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements with Wholly-Owned Sub-Advisors (as defined below) and non-affiliated sub-advisors without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Blackstone Alternative Investment Funds (the ''Trust'') and Blackstone Alternative Asset Management L.P. (''BAAM'').

Filing Dates: The application was filed on September 12, 2012, and amended on January 17, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 1, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 345 Park Avenue, 28th Floor, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trust may offer one or more series of shares (each, a ''Series'') with its own distinct investment objectives, policies and restrictions.[1] Each Series has, or will have, as its investment adviser, BAAM, or another investment adviser controlling, controlled by or under common control with BAAM or its successors (each, an ''Advisor'').[2] BAAM, a Delaware limited partnership, is an indirect, wholly-owned subsidiary of The Blackstone Group L.P. (''Blackstone''). Blackstone is an alternative asset management and financial services company that specializes in private equity, real estate and credit and marketable alternative investment strategies, as well as financial advisory services, such as mergers and acquisitions, restructurings and reorganizations, and private placements.[3]

2. An Advisor will serve as the investment adviser to each Series pursuant to an investment advisory agreement with the Trust (''Investment Management Agreement''). The Investment Management Agreement will be approved by the board of trustees of the Trust (''Board''),[4] including a majority of the members of the Board who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Series or the Advisor (''Independent Board Members'') and by the shareholders of the relevant Series as required by sections 15(a) and 15(c) of the Act and rule 18f-2 thereunder. The terms of these Investment Management Agreements will comply with section 15(a) of the Act.

3. Under the terms of each Investment Management Agreement, the Advisor, subject to the supervision of the Board, will provide continuous investment management of the assets of each Series. The Advisor will periodically review a Series' investment policies and strategies, and based on the need of a particular Series may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the applicable Investment Management Agreement, the Advisor will receive an investment management fee from that Series based on either the average net assets of that Series or that Series' investment performance over a particular period compared to a benchmark. Each Investment Management Agreement will provide that the Advisor may, subject to the approval of the Board, including a majority of the Independent Board Members, and the shareholders of the applicable Subadvised Series (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more Sub-Advisors.[5]

4. Applicants request an order to permit the Advisor, subject to the approval of the Board, including a majority of the Independent Board Members, to, without obtaining shareholder approval: (i) Select Sub-Advisors to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisors, and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisors.[6] The requested relief will not extend to any sub-advisor, other than a Wholly-Owned Sub-Advisor, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or of the Advisor, other than by reason of serving as a sub-advisor to one or more of the Subadvised Series (''Affiliated Sub-Advisor'').

5. Pursuant to each Investment Management Agreement, the Advisor will have overall responsibility for the management and investment of the assets of each Subadvised Series. These responsibilities will include recommending the removal or replacement of Sub-Advisors, determining the portion of that Subadvised Series' assets to be managed by any given Sub-Advisor and reallocating those assets as necessary from time to time.

6. The Advisor may enter into sub-advisory agreements with various Sub-Advisors (''Sub-Advisory Agreements'')

[1] The Trust currently consists of a single Series, the Blackstone Alternative Multi-Manager Fund.

[2] Each Advisor is, or will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] Applicants request that the relief apply to applicants, as well as to any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by an Advisor, uses the multi-manager structure described in the application, and complies with the terms and conditions of the application (''Subadvised Series''). All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Series contains the name of a Sub-Advisor (as defined below), the name of the Advisor that serves as the primary adviser to the Subadvised Series, or a trademark or trade name that is owned by or publicly used to identify that Advisor, will precede the name of the Sub-Advisor.

[4] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Series.

[5] A ''Sub-Advisor'' is (a) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Advisor for that Series; (b) a sister company of the Advisor for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Advisor (each of (a) and (b), a ''Wholly-Owned Sub-Advisor'' and collectively, the ''Wholly-Owned Sub-Advisors''), or (c) an investment sub-advisor for that Series that is not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Series or the Advisor, except to the extent that an affiliation arises solely because the sub-advisor serves as a sub-advisor to a Series (each, a ''Non-Affiliated Sub-Advisor'').

[6] Shareholder approval will continue to be required for any other sub-advisor change (not otherwise permitted by rule or other action of the Commission or staff) and material amendments to an existing Sub-Advisory Agreement with any sub-advisor other than a Non-Affiliated Sub-Advisor or a Wholly-Owned Sub-Advisor (all such changes referred to as ''Ineligible Sub-Advisor Changes'').

to provide investment management services to the Subadvised Series. The terms of each Sub-Advisory Agreement will comply fully with the requirements of section 15(a) of the Act and will be approved by the Board, including a majority of the Independent Board Members and the shareholders of the Subadvised Series, in accordance with sections 15(a) and 15(c) of the Act and rule 18f-2 thereunder. The Sub-Advisors, subject to the supervision of the Advisor and oversight of the Board, will determine the securities and other investments to be purchased or sold by a Subadvised Series and place orders with brokers or dealers that they select. The Advisor will compensate each Sub-Advisor out of the fee paid to the Advisor under the relevant Investment Management Agreement.

7. Subadvised Series will inform shareholders of the hiring of a new Sub-Advisor pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Advisor is hired for any Subadvised Series, that Subadvised Series will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;) [7] and (b) the Subadvised Series will make the Multi-manager Information Statement available on the website identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that website for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisors provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that each Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

8. Applicants also request an order exempting the Subadvised Series from certain disclosure obligations that may require each Subadvised Series to disclose fees paid by the Advisor to each Sub-Advisor. Applicants seek relief to permit each Subadvised Series to disclose (as a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Advisor and any Wholly-Owned Sub-Advisors; (b) the aggregate fees paid to Non-Affiliated Sub-Advisors; and (c) the fee paid to each Affiliated Sub-Advisor (collectively, the ''Aggregate Fee Disclosure'').

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f-2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Advisor, subject to the review and approval of the Board, to select the Sub-Advisors who are in the best position to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisors is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Advisor to perform the duties for which the shareholders of the Subadvised Series are paying the Advisor—the selection, supervision and evaluation of the Sub-Advisors—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Series' shareholders and will allow such Subadvised Series to operate more efficiently. Applicants state that each Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Board Members, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreements.

7. Applicants assert that disclosure of the individual fees that the Advisor

[7] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a-16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Advisor (except as modified to permit Aggregate Fee Disclosure (as defined below); (b) inform shareholders that the Multi-manager Information Statement is available on a website; (c) provide the website address; (d) state the time period during which the Multi-manager Information Statement will remain available on that website; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Series.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

would pay to the Sub-Advisors of Subadvised Series that operate under the multi-manager structure described in the application would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisors are to inform shareholders of expenses to be charged by a particular Subadvised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Advisor will be fully disclosed and, therefore, shareholders will know what the Subadvised Series' fees and expenses are and will be able to compare the advisory fees a Subadvised Series is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Series because it would improve the Advisor's ability to negotiate the fees paid to Sub-Advisors. Applicants state that the Advisor may be able to negotiate rates that are below a Sub-Advisor's ''posted'' amounts if the Advisor is not required to disclose the Sub-Advisors' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisors to negotiate lower subadvisory fees with the Advisor if the lower fees are not required to be made public.

8. For the reasons discussed above, applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Series in the manner described in the application must be approved by shareholders of a Subadvised Series before that Subadvised Series may rely on the requested relief. In addition, applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-owned Sub-Advisors, and provide that shareholders are informed when new Sub-Advisors are hired. Applicants assert that conditions 6, 7, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest with affiliated persons of the Advisor, including Wholly-Owned Sub-Advisors. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Series may rely on the order requested in the application, the operation of the Subadvised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisors, will be, or has been, approved by a majority of the Subadvised Series' outstanding voting securities as defined in the Act, or, in the case of a new Subadvised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Subadvised Series' shares to the public.

2. The prospectus for each Subadvised Series will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Subadvised Series will hold itself out to the public as employing the multi-manager structure described in the application. Each prospectus will prominently disclose that the Advisor has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisors and recommend their hiring, termination and replacement.

3. The Advisor will provide general management services to a Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets. Subject to review and approval of the Board, the Advisor will (a) set a Subadvised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisors to manage all or a portion of a Subadvised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisors comply with a Subadvised Series' investment objective, policies and restrictions. Subject to review by the Board, the Advisor will (a) when appropriate, allocate and reallocate a Subadvised Series' assets among multiple Sub-Advisors; and (b) monitor and evaluate the performance of Sub-Advisors.

4. A Subadvised Series will not make any Ineligible Sub-Advisor Changes without the approval of the shareholders of the applicable Subadvised Series.

5. Subadvised Series will inform shareholders of the hiring of a new Sub-Advisor within 90 days after the hiring of the new Sub-Advisor pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Board Members, and the selection and nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

8. The Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-advisor during the applicable quarter.

9. Whenever a sub-advisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

10. Whenever a sub-advisor change is proposed for a Subadvised Series with an Affiliated Sub-Advisor or a Wholly-Owned Sub-Advisor, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Subadvised Series and its shareholders, and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor or Wholly-Owned Sub-Advisor derives an inappropriate advantage.

11. No Board member or officer of a Subadvised Series, or director, manager, or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a sub-advisor, except for ownership of interests in the Advisor or any entity, other than a Wholly-Owned Sub-Advisor, that controls, is controlled by, or is under common control with the Advisor.

12. Each Subadvised Series will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05759 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30415; 812–13969]

Exchange Traded Concepts Trust, et al.; Notice of Application

March 7, 2013.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Exchange Traded Concepts Trust, Exchange Traded Concepts Trust II, ETF Series Solutions (each a ''Trust'' and collectively referred to as the ''Trusts''), Exchange Traded Concepts LLC (''ETC LLC'') and SEI Investments Distribution Company (''SEI''), Quasar Distributors, LLC (''Quasar'') and Foreside Fund Services, LLC (''Foreside'' and each of SEI, Quasar and Foreside are referred to as a ''Distributor'').

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Actively-managed series of the Trusts to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on October 18, 2011, and amended on July 24, 2012, December 21, 2012, and March 6, 2013.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 1, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549. Applicants, c/o W. John McGuire, Esq. and Christopher D. Menconi, Esq., Bingham McCutchen LLP, 2020 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is registered as an open-end management investment company under the Act and is organized as a Delaware statutory trust. Each Trust will offer Funds (as defined below), each of which will have distinct investment strategies and will attempt to achieve its investment objective by utilizing an active management strategy based on investments in equity and debt securities, including shares of other investment companies.

2. ETC LLC, an Oklahoma limited liability company, is, and any other Adviser (as defined below) will be, registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). An Adviser will be the investment adviser to each Fund and will, in each case, possess full discretionary investment authority with respect to the Fund or discrete portions of a Fund that includes the ability to appoint sub-advisers (each a ''Sub-Adviser'') to a Fund. Any Sub-Adviser will be registered or not subject to registration under the Advisers Act. SEI is a Pennsylvania corporation and Quasar and Foreside are each Delaware limited liability companies. SEI, Quasar and Foreside are each registered as a broker-dealer (''Broker) under the Securities Exchange Act of 1934 (the ''Exchange Act'').[1] A Distributor will serve as the principal underwriter and distributor for each of the Funds.

3. Applicants request that the order apply to future series of the Trusts or to any other open-end investment company or series thereof that may be created in the future that, in each case, (a) is an actively managed exchange-traded fund (''ETF''), (b) is advised by ETC LLC or an entity controlling, controlled by, or under common control with ETC LLC (each such entity or any successor entity thereto, an ''Adviser'')[2] and (c) complies with the terms and conditions of the application (individually a ''Fund,'' and collectively, the ''Funds'').[3] The Funds may invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets. Funds that invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets are ''Global Funds.'' Funds that invest solely in foreign equity securities or foreign fixed income securities are ''Foreign Funds.'' The Funds may also invest in ''Depositary Receipts''[4] and may engage in TBA Transactions (defined below). Each Fund will consist of a portfolio of securities (including equity and fixed income securities), currencies traded in the U.S. or in non-

[1] For purposes of the requested order, the term ''Distributor'' shall include any other entity that acts as the distributor and principal underwriter of the Creation Units of Shares of the Funds in the future and complies with the terms and conditions of the application. Any future Distributor will be a Broker registered under the Exchange Act.

[2] For the purposes of the requested order, ''successor'' is limited to those one or more entities that would result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] All entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will comply with the terms and conditions of the application.

[4] Depositary Receipts are typically issued by a financial institution (a ''Depositary'') and evidence ownership in a security or pool of securities that have been deposited with the Depositary. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants or any Sub-Adviser will serve as the Depositary for any Depositary Receipts held by a Fund.

U.S. markets (''Portfolio Securities''), and other assets.[5]

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund; (ii) any Acquiring Fund (as defined below); and (iii) any Brokers selling Shares of a Fund to an Acquiring Fund or any principal underwriter of a Fund.[6] A management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Fund within the meaning of section 12(d)(1)(G)(ii) of the Act and that acquires Shares of a Fund in excess of the limits of Section 12(d)(1)(A) of the Act is referred to as an ''Acquiring Management Company'' or an ''Acquiring Trust,'' respectively, and the Acquiring Management Companies and Acquiring Trusts are referred to collectively as ''Acquiring Funds.''[7]

5. A Creation Unit will consist of at least 25,000 Shares and applicants expect that the trading price of a Share will range from $40 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'', and such process the ''NSCC Process''), or (b) a participant in the Depository Trust Company (''DTC,'' such participant ''DTC Participant'' and such process the ''DTC Process''), which, in either case, has executed an agreement with the Distributor with respect to the purchase and redemption of Creation Units.

6. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[8] On any given Business Day[9] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[10] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[11] or (c) TBA Transactions,[12] short positions or other positions that cannot be transferred in kind[13] will be excluded from the Creation Basket.[14] If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Global Funds and Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund or Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[15]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (a ''Listing Market''), on which Shares are listed and traded, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. For each Fund, the relevant Listing Market will disseminate every 15 seconds throughout the trading a calculation of the estimated NAV of a

[5] If a Fund invests in derivatives, then (a) the Fund's board of trustees or directors (for any entity, the ''Board'') will periodically review and approve the Fund's use of derivatives and how the Fund's investment adviser assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[6] Any future principal underwriter of a Fund will be a Broker registered under the Exchange Act and will comply with the terms and conditions of the application.

[7] An Acquiring Fund may rely on the order only to invest in a Fund and not in any other registered investment company.

[8] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[9] Each Fund will sell and redeem Creation Units on any day that the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[10] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[11] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[12] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[13] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[14] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[15] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

Share (which estimate is expected to be accurate to within a few basis points).

9. Each Fund will recoup the settlement costs charged by NSCC and DTC by imposing a fee (the ''Transaction Fee'') on investors purchasing or redeeming Creation Units.[16] All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit such orders to the Funds. The Distributor will be responsible for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on a Listing Market and it is expected that the relevant Listing Market will designate one or more member firms to maintain a market for the Shares.[17] The price of Shares trading on a Listing Market will be based on a current bid-offer in the secondary market. Purchases and sales of Shares in the secondary market will not involve a Fund and will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[18] Applicants believe that the structure and operation of the Funds will be designed to enable efficient arbitrage and, thereby, minimize the probability that Shares will trade at a material premium or discount to a Fund's NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

13. Neither a Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or mutual fund. Instead, each Fund will be marketed as an ''exchange-traded fund.'' All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units, or Shares traded on a Listing Market, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire those Shares from a Fund or tender those Shares for redemption to the Fund in Creation Units only.

14. Each Trust's Web site, which will be publicly available prior to the offering of Shares, will include each Fund's prospectus (''Prospectus''), statement of additional information (''SAI''), and summary prospectus, if used. Each Web site will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or the Bid/Ask Price against such NAV. On each Business Day, prior to the commencement of trading in Shares on a Listing Market, each Fund shall post on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the calculation of the NAV at the end of that Business Day.[19]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trusts and each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and that Creation Units will always be redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that

[16] Cash purchases and redemptions of Shares may involve a higher Transaction Fee to cover the costs of purchasing and selling the applicable Deposit and Redemption Instruments. In all cases, the Transaction Fee will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

[17] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Listing Market (including NYSE Arca, Inc.), one or more member firms of that Listing Market will act as market maker (a ''Market Maker'') and maintain a market for Shares trading on that Listing Market. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq stipulate that at least two Market Makers must be registered in Shares to maintain a listing. Registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares.

[18] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[19] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the Foreign and Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets for underlying foreign Portfolio Securities in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fourteen (14) calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign and Global Fund customarily clear and settle, but in all cases no later than fourteen (14) days following the tender of a Creation Unit.[20]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will identify those instances in a given year where, due to local holidays, more than seven calendar days, up to a maximum of fourteen calendar days, will be needed to deliver redemption proceeds and will list such holidays. Applicants are not seeking relief from section 22(e) for Foreign and Global Funds that do not effect redemptions of Creation Units in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Acquiring Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Acquiring Funds in excess of the limits in section 12(d)(l)(B) of the Act.

11. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

12. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Acquiring Management Company (''Acquiring Fund Adviser''), sponsor of an Acquiring Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor (''Acquiring Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Acquiring Fund (''Acquiring Fund Sub-Adviser''), any person controlling, controlled by or under common control with the

[20] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

Acquiring Fund Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Sub-Adviser or any person controlling, controlled by or under common control with the Acquiring Fund Sub-Adviser (''Acquiring Fund's Sub-Advisory Group'').

13. Applicants propose a condition to ensure that no Acquiring Fund or Acquiring Fund Affiliate [21] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Sub-Adviser, employee or Sponsor of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the Board of any Acquiring Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (for any Board, the ''Independent Trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Acquiring Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[22]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

16. To ensure that an Acquiring Fund is aware of the terms and conditions of the requested order, the Acquiring Funds must enter into an agreement with the respective Funds (''Acquiring Fund Agreement''). The Acquiring Fund Agreement will include an acknowledgement from the Acquiring Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Section 17(a) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person (''Second Tier Affiliates''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund'').

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or Second Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the Shares of a Trust of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the transactions that would accompany such sales and redemptions with, any Acquiring Fund of which the Fund is an affiliated person or Second-Tier Affiliate.[23]

19. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons or Second Tier Affiliates from acquiring or redeeming Creation Units through in-kind transactions. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemptions Instruments will be valued in the same manner as the Portfolio Securities held by the relevant Fund. Applicants thus believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also submit that the sale of Shares to and redemption of Shares from an Acquiring Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Creation Units directly from a Fund will be based on the NAV of the Fund.[24] The

[21] An ''Acquiring Fund Affiliate'' is any Acquiring Fund Adviser, Acquiring Fund Sub-Adviser, Sponsor, promoter and principal underwriter of an Acquiring Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[22] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[23] Applicants anticipate that most Acquiring Funds will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Acquiring Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Acquiring Fund and redemptions of those Shares in Creation Units. The requested relief is intended to cover transactions that would accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of an Acquiring Fund because an investment adviser to the Funds is also an investment adviser to that Acquiring Fund.

[24] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of

Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Units directly from a Fund to represent that the purchase will be in compliance with its investment restrictions and consistent with the investment policies set forth in its registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively Managed Exchange-Traded Fund Relief

1. Neither a Trust nor any Fund will be advertised or marketed as an open-end investment company or mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

2. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

3. As long as a Fund operates in reliance on the requested order, its Shares will be listed on a Listing Market.

4. On each Business Day, before commencement of trading in Shares on a Fund's Listing Market, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Sub-Advisers, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

7. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Acquiring Fund's Advisory Group or the Acquiring Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of that Fund's Shares. This condition does not apply to the Acquiring Fund's Sub-Advisory Group with respect to a Fund for which the Acquiring Fund Sub-Adviser or a person controlling, controlled by, or under common control with the Acquiring Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

9. The Board of an Acquiring Management Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Adviser and any Acquiring Fund Sub-Adviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

10. Once an investment by an Acquiring Fund in the Shares of a Fund exceeds the limits in section l2(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the Independent Trustees, will determine that any consideration paid by the Fund to an Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

11. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

12. The Board of a Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board of the Fund will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

13. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six

Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund, may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Fund were made.

14. Before investing in Shares of a Fund in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their Boards and their investment adviser(s), or their Sponsors or trustees (''Trustee''), as applicable, understand the terms and conditions of the requested order, and agree to fulfill their responsibilities under the requested order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the requested order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

15. The Acquiring Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–l under the Act) received from the Fund by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser, Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Sub-Adviser will waive fees otherwise payable to the Acquiring Fund Sub-Adviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Sub-Adviser, or an affiliated person of the Acquiring Fund Sub-Adviser, other than any advisory fees paid to the Acquiring Fund Sub-Adviser or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Sub-Adviser. In the event that the Acquiring Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

16. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

17. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

18. Before approving any advisory contract under section 15 of the Act, the Board of of each Acquiring Management Company, including a majority of the Independent Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05758 Filed 3–12–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69055; File No. SR–NASDAQ–2013–038]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fee Schedule Governing Order Routing

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing [sic] proposed changes to amend NASDAQ's fee schedule governing order routing. NASDAQ will implement the proposed change on February 27, 2013.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending its fee schedule governing order routing to establish fees for routing orders using its two new order routing strategies, QDRK and QCST.[3] All of the changes pertain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] QDRK orders, pursuant to Rule 4758(a)(1)(A)(xii), check the System for available

to securities priced at $1 or more per share, and to securities listed on NASDAQ, the New York Stock Exchange (''NYSE'') and exchanges other than NASDAQ and NYSE. In addition, QDARK [sic] and QCST orders, like other routable orders, will not count toward determining a member's shares of liquidity routed for purposes of NASDAQ fees.

With respect to QDRK and QCST orders that access liquidity in the NASDAQ Market Center, members will be charged $0.0029 per share executed. With respect to QDRK and QCST orders that execute on a venue other than NASDAQ, members will be charged $0.0005 per share executed, except that for QCST orders that execute on NASDAQ OMX BX, members will receive a credit of $0.0014 per share executed.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed pricing for QDRK and QCST orders executed on NASDAQ is reasonable because it is similar to the current pricing for most orders executed on NASDAQ. The proposed fee for QDRK and QCST orders that execute on a venue other than NASDAQ is s [sic] the same as the current fee for TFTY orders, and the credit for orders that execute on NASDAQ OMX BX is the same as the current credit for TFTY, SOLV [sic] CART and SAVE orders that execute on NASDAQ OMX BX.

The proposed pricing for QDRK and QCST orders is consistent with an equitable allocation of fees and is not unfairly discriminatory because the pricing, which is the same for all NASDAQ participants, applies solely to members that opt to route QDRK and QCST orders. Moreover, the lower cost of these routing strategies as compared with other existing routing strategies is not unfairly discriminatory because it is consistent with the lower costs associated with routing to the venues that are accessed by the new strategies.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the NASDAQ routing facility to route reflect changes in the cost of such routing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order routing is extremely competitive, members may readily opt to disfavor NASDAQ's routing services if they believe that alternatives offer them better value. Moreover, by introducing new routing options and charging fees that NASDAQ believes to be reasonable, NASDAQ believes that it is increasing its competitiveness vis-à-vis other trading venues. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. NASDAQ also does not believe that the proposal raises issues of competition among its own market participants, because the proposal applies fee and credits equally to all participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by NASDAQ.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[8] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

shares and simultaneously route to certain destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS (i.e. ''dark venues'' or ''dark pools''). QCST orders, pursuant to Rule 4758(a)(1)(A)(xiii), check the System for available shares and simultaneously route to select dark venues and to certain low cost exchanges. *See* Securities Exchange Act Release No. 68839 (February 6, 2013), 78 FR 9957 (February 12, 2013) (SR–NASDAQ–2013–014).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 15 U.S.C. 78s(b)(2)(B).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–038, and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05734 Filed 3–12–13; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69061; File No. SR–NYSEArca–2013–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of the Newfleet Multi-Sector Income ETF Under NYSE Arca Equities Rule 8.600

March 7, 2013.

I. Introduction

On January 4, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Newfleet Multi-Sector Income ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on January 23, 2013.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by AdvisorSharesTrust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The investment manager to the Fund will be AdvisorShares Investments LLC (''Adviser''). Newfleet Asset Management, LLC will serve as sub-adviser to the Fund (''Sub-Adviser''). Foreside Fund Services, LLC will serve as the distributor for the Fund. The Bank of New York Mellon will serve as the custodian and transfer agent for the Fund. The Exchange represents that the Adviser is not affiliated with a broker-dealer. The Exchange represents that the Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.[5]

Description of the Fund

Principal Investments

The Fund will, under normal market conditions,[6] invest at least eighty percent (80%) in investment-grade fixed income securities, which are fixed income securities with credit ratings within the four highest rating categories of a nationally recognized statistical rating organization. The Fund may invest in unrated securities to a limited extent if such security is determined by the Sub-Adviser to be of comparable quality.[7] The average duration of the Fund's fixed income investments will range from one to three years.

The Fund's investment objective is to provide a competitive level of current income, consistent with preservation of capital, while limiting fluctuations in net asset value (''NAV'') due to changes in interest rates. The Fund seeks to apply extensive credit research and a time-tested approach to capitalize on opportunities across undervalued areas of the bond markets.

The Sub-Adviser will seek to provide diversification by allocating the Fund's investments among various sectors of the fixed income markets, including investment grade debt securities issued primarily by U.S. issuers and secondarily by non-U.S. issuers, as follows:

- Securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, authorities, or instrumentalities, including collateralized mortgage obligations, real estate mortgage investment conduits, and other pass-through securities;
- Non-agency [8] commercial mortgage-backed securities (''CMBS''), agency and non-agency residential mortgage-backed securities (''RMBS''), and other asset backed securities; [9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68666 (Jan. 16, 2013), 78 FR 4960 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On June 25, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act'') and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677).

[5] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[6] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[7] In determining whether a security is of ''comparable quality,'' the Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis; and sector or industry analysis.

[8] ''Non-agency'' securities are financial instruments that have been issued by an entity that is not a government-sponsored agency, such as the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Home Loan Banks, or the Government National Mortgage Association.

[9] Although the Fund has not established a fixed limit to the amount of non-agency securities in which it will invest, at least 80% of the Fund's net assets will be, under normal market conditions, invested in U.S. dollar denominated investment grade fixed income securities. The liquidity of any such security will be a factor in the selection of any such security.

• U.S. and non-U.S. corporate bonds;[10]
• Yankee bonds;[11]
• Taxable municipal bonds and tax-exempt municipal bonds; and
• Debt securities issued by foreign governments and their political subdivisions.

The Fund represents that the portfolio will include a minimum of 13 non-affiliated issuers of fixed income securities. The Fund will only purchase performing securities and not distressed debt.[12]

In seeking to achieve the Fund's investment objective, the Sub-Adviser will employ active sector rotation and disciplined risk management in the construction of the Fund's portfolio. The Fund's investable assets will be allocated among various sectors of the fixed income market using a ''top-down''[13] relative value approach that looks at factors such as yield and spreads, supply and demand, investment environment, and sector fundamentals. The Sub-Adviser will select particular investments using a bottom-up, fundamental research-driven analysis that includes assessment of credit risk, company management, issuer capital structure, technical market conditions, and valuations. The Sub-Adviser will select securities it believes offer the best potential to achieve the Fund's investment objective of providing a high level of total return, including a competitive level of current income, while preserving capital.

Other Investments

While the Fund will invest at least eighty percent (80%) in investment-grade fixed income securities, in the absence of normal market conditions the Fund may invest 100% of its total assets, without limitation, in short-term high-quality debt securities and money market instruments either directly or through exchange traded funds (''ETFs'').[14] The Fund may be invested in this manner for extended periods depending on the Sub-Adviser's assessment of market conditions. These short-term debt instruments and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. government securities, repurchase and reverse repurchase agreements,[15] and bonds that are rated BBB or higher.

The Fund may invest up to 20% of its total assets in fixed-income securities that are rated below investment grade at the time of purchase. Such securities include corporate high yield debt securities, emerging market high yield debt securities, and bank loans. In addition, such securities may include non-investment grade CMBS, RMBS, or other asset-backed securities, or debt securities issued by foreign issuers. If certain of the Fund's holdings experience a decline in their credit quality and fall below investment grade, the Fund may continue to hold the securities and they will not count toward the Fund's 20% investment limit; however, the Fund will make reasonable investment decisions relating to the Fund's holdings aligned with its investment objective with respect to such securities. Generally, the Fund will limit its investments in corporate high yield debt securities to 10% of its assets and will limit its investments in non-U.S. issuers to 30% of its assets. The Sub-Adviser will regularly review the Fund's portfolio construction, endeavoring to minimize risk exposure by closely monitoring portfolio characteristics such as sector concentration and portfolio duration and by investing no more than 5% of the Fund's total assets in securities of any single issuer (excluding the U.S. government, its agencies, authorities, or instrumentalities).

The Fund may invest in equity securities.[16] The Fund will purchase such equity securities traded in the U.S. on registered exchanges. Additionally, the Fund may invest in the equity securities of foreign issuers, including the securities of foreign issuers in emerging countries.[17] With respect to its equity securities investments, the Fund will invest only in equity securities (including Equity Financial Instruments) that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[10] The Adviser expects that under normal market conditions, the Fund will seek to invest at least 75% of its assets in corporate bond issuances that have at least $100,000,000 par amount outstanding in developed countries and at least $200,000,000 par amount outstanding in emerging market countries.

[11] Yankee bonds are denominated in U.S. dollars, registered in accordance with the Securities Act and publicly issued in the U.S. by foreign banks and corporations.

[12] Distressed debt is debt that is currently in default and is not expected to pay the current coupon.

[13] A ''top-down'' portfolio management style utilizes a tactical and globally diversified allocation strategy in an attempt to reduce risk and increase overall performance. This management style begins with a look at the overall economic picture and current market conditions and then narrows its focus down to sectors, industries, or countries and ultimately to individual companies. The final step is a fundamental analysis of each individual security and to a lesser extent technical analysis.

[14] The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged ETFs (*e.g.,* 2X or 3X).

[15] The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. In the event of a default or bankruptcy by a selling financial institution, the Fund will seek to liquidate such collateral. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

[16] Equity securities represent ownership interests in a company or partnership and consist not only of common stocks, which are one of the Fund's primary types of investments, but also preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.

[17] The Fund may invest in issuers located outside the United States directly, or in financial instruments that are indirectly linked to the performance of foreign issuers. Examples of such financial instruments include American Depository Receipts (''ADRs''), ''ordinary shares,'' and ''New York shares'' (each of which is issued and traded in the U.S.); and Global Depository Receipts (''GDRs''), European Depository Receipts (''EDRs''), and International Depository Receipts (''IDRs''), which are traded on foreign exchanges (all of the foregoing financial instruments are collectively referred to as ''Equity Financial Instruments''). ADRs are U.S. dollar denominated receipts typically issued by U.S. banks and trust companies that evidence ownership of underlying securities issued by a foreign issuer. The underlying securities may not necessarily be denominated in the same currency as the securities into which they may be converted. The underlying securities are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. Generally, ADRs in registered form are designed for use in domestic securities markets. Ordinary shares are shares of foreign issuers that are traded abroad and on a U.S. exchange. New York shares are shares that a foreign issuer has allocated for trading in the U.S. ADRs, ordinary shares, and New York shares all may be purchased with and sold for U.S. dollars, which protects the Fund from foreign settlement risks. GDRs, EDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer, however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world.

The Fund may invest in exchange-traded notes (''ETNs'').[18]

The Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder,[19] other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies,[20] including other ETFs; provided that the Fund, immediately after such purchase or acquisition, does not own in the aggregate: (i) More than 3% of the total outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the Fund; or (iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the Fund) having an aggregate value in excess of 10% of the value of the total assets of the Fund.

The Fund also may invest in the securities of other investment companies if the Fund is part of a ''master-feeder'' structure or operates as a fund of funds in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.[21] Section 12(d)(1) prohibits another investment company from selling its shares to the Fund if, after the sale: (i) the Fund owns more than 3% of the other investment company's voting stock or (ii) the Fund and other investment companies, and companies controlled by them, own more than 10% of the voting stock of such other investment company. The Trust has entered into agreements with several unaffiliated ETFs that permit, pursuant to a Commission order, the Fund to purchase shares of those ETFs beyond such limits set forth in Section 12(d)(1). The Fund will only make such investments in conformity with the requirements of Subchapter M of the Internal Revenue Code of 1986, as amended (''Code''). The Fund will seek to qualify for treatment as a Regulated Investment Company under the Code.

The Fund may invest in the exchange traded securities of pooled vehicles that are not investment companies and, thus, not required to comply with the provisions of the 1940 Act. Such pooled vehicles would be required to comply with the provisions of other federal securities laws, such as the Securities Act. These pooled vehicles typically hold commodities, such as gold or oil, currency, or other property that is itself not a security.

The Fund may invest in shares of exchange-traded real estate investment trusts.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests (*e.g.,* bank loans). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities, or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities, or shares of investment companies. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates.

The Fund will not invest in options contracts, futures contracts, or swap agreements.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[22] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio[23] will be made available to all market participants at the same time. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Additional information regarding the Trust, Fund, and Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[24]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[25] and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[27] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[28] which sets

[18] ETNs, also called index-linked securities as would be listed, for example, under NYSE Arca Equities Rule 5.2(j)(6), are senior, unsecured, unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark less investor fees.

[19] 15 U.S.C. 80a–12(d)(1).

[20] Investment companies may include index-based investments, such as ETFs that hold substantially all of their assets in securities representing a specific index.

[21] 15 U.S.C. 80a–12(d)(1)(E),(F) and (G).

[22] 17 CFR 240.10A–3.

[23] The term ''Disclosed Portfolio'' is defined in NYSE Arca Equities Rule 8.600(c)(2).

[24] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[25] 15 U.S.C. 78f.

[26] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78k–1(a)(1)(C)(iii).

forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. Eastern time to 4:00 p.m. Eastern time).[29] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[30] The NAV of the Fund will be calculated once each business day as of the regularly scheduled close of trading (normally, 4:00 p.m. Eastern time) on the New York Stock Exchange, LLC. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, price information for the debt and other securities and investments held by the Fund will be available through major market data vendors or on the exchanges on which they are traded. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[31] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[32] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[33] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that, while the Adviser is not affiliated with a broker-dealer, the Sub-Adviser is affiliated with a broker-dealer, and the Sub-Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.[34] The Exchange will communicate as needed regarding trading in the Shares with other markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange represents that the Fund will invest only in equity securities and Equity Financial Instruments that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the

[29] According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

[30] On a daily basis, the Fund will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[31] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[32] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[33] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[34] *See supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[35] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will, under normal market conditions, invest at least eighty percent (80%) in investment-grade securities, which are fixed income securities with credit ratings within the four highest rating categories of a nationally recognized statistical rating organization, or, if unrated, those securities that the Sub-Adviser determines to be of comparable quality.

(7) The Fund's portfolio will include a minimum of 13 non-affiliated issuers of fixed income securities.

(8) The Fund will only purchase performing securities and not distressed debt.

(9) Generally, the Fund will limit its investments in corporate high yield debt securities to 10% of its assets and will limit its investments in non-U.S. issuers to 30% of its assets.

(10) Under normal market conditions, the Fund will seek to invest at least 75% of its assets in corporate bond issuances that have at least $100,000,000 par amount outstanding in developed countries and at least $200,000,000 par amount outstanding in emerging market countries.

(11) The Fund will invest only in equity securities (including Equity Financial Instruments) that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(12) The Fund will not invest in options contracts, futures contracts, or swap agreements.

(13) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including Rule 144A securities and loan participation interests, and will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.

(14) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in leveraged or inverse leveraged ETFs.

(15) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[36] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NYSEArca–2013–01) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

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[35] 17 CFR 240.10A–3.

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69063; File No. SR–FINRA–2013–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend FINRA Rule 2267 (Investor Education and Protection)

March 7, 2013.

On January 7, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 2267 (Investor Education and Protection) to require that members include a prominent description of and link to FINRA BrokerCheck, as prescribed by FINRA, on their Web sites, social media pages, and any comparable Internet presence, and on Web sites, social media pages, and any comparable Internet presence relating to a member's investment banking or securities business maintained by or on behalf of any person associated with a member. The proposed rule change was published for comment in the **Federal Register** on January 25, 2013.[3] The Commission received 24 comment letters on the proposal.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68700 (Jan. 18, 2013), 78 FR 5542.

[4] *See* Letter from Charles Barker, dated January 29, 2013; Letter from David M. Sobel, Esq., Abel/Noser Corp., dated January 30, 2013; Letter from Pamela Albanese, Legal Intern, and Christine Lazaro, Esq., Acting Director, St. John's University School of Law, Securities Arbitration Clinic, dated February 4, 2013; Letter from Peter J. Chepucavage, General Counsel, Plexus Consulting Group, LLC, dated February 6, 2013; Letter from Jonathan W. Evans and Michael S. Edmiston, Jonathan W. Evans Associates, dated February 10, 2013; Letter from Scott R. Shewan, Pape Shewan, LLP, dated February 11, 2013; Letter from David Neuman, Stoltmann Law Offices, dated February 12, 2013; Letter from Barry D. Estell, dated February 12, 2013; Letter from Scott C. Ilgenfritz, President, Public Investors Arbitration Bar Association, dated February 13, 2013; Letter from Bert Savage, dated February 13, 2013; Letter from William A. Jacobson, Esq., Associate Clinical Professor, Cornell Law School, Director, Securities Law Clinic, and Alexander Wingate, Cornell Law School, dated February 14, 2013; Letter from A. Heath Abshure, President, North American Securities Administrators Association, Inc., dated February 15, 2013; Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated February 15, 2013; Letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated February 15, 2013; Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, dated February 15, 2013; Letter from Scott A. Eichhorn, Supervising Attorney, and Julianne S. Bisceglia, Legal Intern, University of Miami School of Law, Investor Rights Clinic, dated February 15, 2013; Letter from Melissa MacGregor, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 15, 2013; Letter from Brendan Daly, Legal and Compliance Counsel, Commonwealth Financial Network, dated February 15, 2013; Letter from James Cooper, Chief Operating Officer, Zions Direct, dated February 15, 2013; Letter from Melissa Callison, Vice President, Compliance, Charles Schwab & Co., Inc, dated February 15, 2013; Letter from James Smith, Chief Compliance Officer, BlackRock Investments, LLC, Ned Montenecourt, Chief Compliance Officer, BlackRock Capital Markets, LLC, BlackRock Execution Services, and Joanne Medero, Managing Director, BlackRock, Inc., dated February 15, 2013; Letter from Clifford E. Kirsch and Eric A. Arnold, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers, dated February 15, 2013; Letter from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated February 16, 2013; and Letter from Lisa Catalano, Esq., dated February 18, 2013.

[5] 15 U.S.C. 78s(b)(2).

change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 11, 2013. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, the comments received, and any response to the comments submitted by FINRA. The proposed rule change would amend FINRA Rule 2267 to require that members include a prominent description of and link to FINRA BrokerCheck, as prescribed by FINRA, on their Web sites, social media pages, and any comparable Internet presence, and on Web sites, social media pages, and any comparable Internet presence relating to a member's investment banking or securities business maintained by or on behalf of any person associated with a member.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates April 25, 2013, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–FINRA–2013–002).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05719 Filed 3–12–13; 8:45 am]

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[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69069; File No. SR–NASDAQ–2013–043]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt Chapter V, Section 3(d)(iii) Regarding Quoting Obligations

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Chapter V, Section 3(d)(iii) to provide for how the Exchange proposes to treat options market-making quoting obligations, in response to the Regulation NMS Plan to Address Extraordinary Market Volatility.

The text of the proposed rule change is below; proposed new language is italicized.

* * * * *

Chapter V Regulation of Trading on NOM

* * * * *

Sec. 3 Trading Halts

(a)–(c) No change.

(d) This paragraph shall be in effect during a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (''LULD Plan''). Capitalized terms used in this paragraph shall have the same meaning as provided for in the LULD Plan. During a Limit State and Straddle State in the Underlying NMS stock:

(i)–(ii) No change.

(iii) When evaluating whether a Market Maker has met the continuous quoting obligations of Chapter VII, Section 6(d) in options overlying NMS stocks, the Exchange will not consider as part of the trading day the time that an NMS stock underlying an option was in a Limit State or Straddle State.

(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Chapter V, Section 3(d)(iii)[3] to provide for how the Exchange will treat options market making quoting obligations in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''), which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47). The Exchange proposes to adopt new Chapter V, Section 3(d)(iii) for a pilot period that coincides with the pilot period for the Plan.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the equities exchanges and the Financial Industry Regulatory Authority (''FINRA'') have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses,[4] related changes to the equities market clearly erroneous execution rules,[5] and more stringent equities market maker quoting requirements.[6] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[7] In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The provisions of Chapter V, Sections 3(d)(i)–(ii) and 3(e) were filed and became effective on February 28, 2013, with a 30 day operative delay, on a pilot basis. *See* SR–NASDAQ–2013–040.

[4] *See e.g.,* NASDAQ Rule 4120.

[5] *See e.g.,* NASDAQ Rule 4762.

[6] *See e.g.,* NASDAQ Rule 4613.

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving the Plan on a Pilot Basis).

[8] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61;

Continued

The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[9] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.

As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[10] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[11] All trading centers in NMS stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[12] Trading in an NMS stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[13] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan, which would be applicable to all markets trading the security.[14] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore unexecutable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

Proposal

The Exchange proposes to adopt Chapter V, Section 3(d)(iii) to provide that the Exchange shall exclude the amount of time an NMS stock underlying a NOM option is in a Limit State or Straddle State from the total amount of time in the trading day when calculating the percentage of the trading day Options Market Makers are required to quote.

Currently, the quoting requirements appear in Chapter VII, Sections 5 and 6, which generally require that, on a daily basis, a Market Maker must during regular market hours make markets consistent with the applicable quoting requirements specified in these rules, on a continuous basis in at least sixty percent (60%) of the series in options in which the Market Maker is registered. To satisfy this requirement with respect to quoting a series, a Market Maker must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as NASDAQ may announce in advance.

The Exchange now proposes to subtract from the total number of minutes in a trading day the time period for an option when the underlying NMS stock was in a Limit State or Straddle State. The Exchange believes that this is appropriate for the same reasons discussed above, in light of the limited price discovery in the underlying stock and the direct relationship between an options price and the price of the underlying security. During a Limit State or Straddle State, the bid price or offer price of the underlying security will be unexecutable and the ability to hedge the purchase or sale of an option will be jeopardized. Recognizing that it may be impossible to hedge to offset the risk created by trading options, the Exchange expects that Options Market Makers will, as a result, modify their quoting behavior. The Exchange believes it is reasonable and appropriate to exclude this time period, which the Exchange believes will generally be limited.

The Exchange has considered waiving its bid/ask differential requirement (also known as quote spread parameters), but ultimately determined that those requirements should be maintained in order to promote liquidity and the operation of a fair and orderly market. Accordingly, even when the quoting obligation is not in effect, Options Market Makers who choose to quote must do so within the applicable bid-ask differentials. The Exchange believes that this should help ensure the quality of the quotes that are entered and preserves one of the obligations of being a market maker.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and with Section 6(b)(5) of the Act,[16] in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because the Exchange believes that excluding the Limit and Straddle State from an Options Market Maker's quoting obligation calculation should promote just and equitable principles of trade by recognizing the particular risk that arises for liquidity providers who cannot hedge. Whenever an NMS stock is in a Limit State or Straddle State, trading continues; however, there will not be a reliable price for a security to serve as a benchmark for the price of the option. Accordingly, the Exchange seeks to expressly remove these periods from consideration in order to enable Options

SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–011–73; SR–NYSEArca–2011–68; SR-Phlx–2011–129).

[9] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[10] *See* Section V(A) of the Plan.

[11] *See* Section VI(A) of the Plan.

[12] *See* Section VI(A)(3) of the Plan.

[13] *See* Section VI(B)(1) of the Plan.

[14] The primary listing market would declare a Trading Pause in an NMS stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

Market Makers to provide the necessary liquidity and facilitate transactions on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all Participants subject to those obligations in the same manner. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily operate on competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide liquidity during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2013–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2013–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2013–043 and should be submitted on or before March 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05751 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69058; File No. SR–NASDAQ–2013–039]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Replace the Current Mid-Point Test Applied to the Definition of Theoretical Price

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed a proposed rule change for the NASDAQ Options Market (''NOM'') to amend Chapter V Regulation of Trading on NOM, Section 6, Obvious Errors, to replace the current mid-point test applied to the definition of Theoretical Price, as described further below.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

Chapter V Regulation of Trading on NOM

* * * * *

Sec. 6 Obvious Errors

(a) Nasdaq shall either nullify a transaction or adjust the execution price of a transaction that meets the standards provided in this Section.

(b) No change.

(c) *Definition of Theoretical Price.* For purposes of this Section only, the Theoretical Price of an option series is,

(i) If the series is traded on at least one other options exchange, the [mid-point of the] *last* National Best Bid *price with respect to an erroneous sell transaction and the last National Best Offer price with respect to an erroneous buy transaction* [and Offer (''NBBO'')], just prior to the transaction; or

(ii) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(d)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to help Participants to better manage their risk by modernizing the Exchange's Obvious Errors rule. Chapter V, Section 6 governs obvious and catastrophic errors. Obvious errors are calculated under the rule by determining a theoretical price and determining, based on objective standards, whether the trade should be nullified or adjusted. The rule also contains a process for requesting an obvious error review. Certain more substantial errors may fall under the category of a catastrophic error, for which a longer time period is permitted to request a review and for which trades can only be adjusted (not nullified). Trades are adjusted pursuant to an adjustment table that, in effect, assesses an adjustment penalty. By adjusting trades above or below the theoretical price, the Rule assesses a ''penalty'' in that the adjustment price is not as favorable as the amount the party making the error would have received had it not made the error.

Currently, Chapter V, Section 6 provides that the definition of the Theoretical Price of an option is: (i) If the series is traded on at least one other options exchange, the mid-point of the National Best Bid and Offer (''NBBO''), just prior to the transaction; or (ii) if there are no quotes for comparison purposes, as determined by MarketWatch as defined in Chapter I.

The Exchange believes that in certain situations the application of the rule when determining to nullify or adjust transactions may lead to an unfair result for one of the parties to the transaction, particularly where the market for the affected series includes a bid price that is relatively small (for example, $0.50) and a substantially higher offer (for example $5.00). The result is that a transaction to sell that occurs correctly on the bid at $0.50 could be adjusted based on the midpoint of the NBBO, which is, in this example, $2.75. In such a case, the result is unfair to the bidder at $0.50, whose price would be adjusted based on the Theoretical Price of $2.75, and an unjust enrichment to the seller, who is entitled to $0.50 based on the bid, but who would receive the adjusted price of over $2.00 higher because of the rule, and not due to market conditions.

Accordingly, the proposal would re-define ''Theoretical Price'' to mean either the last National Best Bid price with respect to an erroneous sell transaction or the last National Best Offer price with respect to an erroneous buy transaction, just prior to the trade. The purpose of this provision is to establish a Theoretical Price that is clearly defined when there are quotations to compare to the erroneous transaction price, and to eliminate the scenario above that arises from the ''mid-point'' test when the NBBO is particularly wide. The Exchange notes that other options exchanges previously employed the mid-point test but changed it to the NBBO test.

When another options exchange's comparable rule was first adopted, the Commission stated that it ''* * * considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an 'obvious error' may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether an 'obvious error' has occurred, and the adjustment or nullification of a transaction because an obvious error is considered to exist, should be based on specific and objective criteria and subject to specific and objective procedures * * * The Commission believes that Phlx's proposed obvious error rule establishes specific and objective criteria for determining when a trade is an 'obvious error.' Moreover, the Commission believes that the Exchange's proposal establishes specific and objective procedures governing the adjustment or nullification of a trade that resulted from an 'obvious error.' '' [3]

2. Statutory Basis

NASDAQ believes that its proposal is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, by helping Exchange members better manage the risk associated with potential erroneous trades. Specifically, the Exchange believes that the proposal is consistent with these principles, because it sets forth an objective process based on specific and objective criteria and subject to specific and objective procedures. In addition, the Exchange has again weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. Accordingly, the Exchange has determined that defining the Theoretical Price of an option with reference to the NBBO is appropriate and consistent with the aforementioned principles.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal does not impose an intra-market burden on competition, because the new definition of Theoretical Price will apply to all Options Participants. Nor will the proposal impose a burden on competition among the options exchanges, because of the vigorous competition for order flow among the options exchanges. NOM competes with 10 other options exchanges in a highly competitive market, where market participants can easily and readily direct order flow to competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[3] *See* Securities Exchange Act Release No. 49785 (May 28, 2004), 69 FR 32090 (June 8, 2004) (SR–Phlx–2003–68).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)(iii) thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–039 and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05735 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69053; File No. SR–BX–2013–019]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify BX's Fee Schedule Governing Order Routing

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2013, NASDAQ OMX BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX proposes to amend BX's fee schedule governing order routing. BX will implement the proposed change on February 27, 2013. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is amending its fee schedule governing order routing to establish fees for routing orders using its two new order routing strategies, BDRK and BCST.[3] All of the changes pertain to securities priced at $1 or more per share.

With respect to BDRK and BCST orders that access liquidity in the BX Equities System, members will receive a credit of $0.0014 per share executed. With respect to BDRK and BCST orders that execute on a venue other than the BX Equities System, members will be charged $0.0010 per share. With respect to BDRK and BCST orders that provide liquidity in the BX Equities System, members will be charged no differently than other orders that provide liquidity. Specifically, members will be charged

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] BDRK orders, pursuant to Rule 4758(a)(1)(A)(viii), check the System for available shares and simultaneously route to certain destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS (i.e. ''dark venues'' or ''dark pools''). BCST orders, pursuant to Rule 4758(a)(1)(A)(ix), check the System for available shares and simultaneously route to select dark venues and to certain low cost exchanges. *See* Securities Exchange Act Release No. 68840 (February 6, 2013), 78 FR 9961 (February 12, 2013) (SR–BX–2013–008).

$0.0015 or $0.0018 per share for orders that provide displayed liquidity (based on the MPID's eligibility for the Qualified Liquidity Provider rate), $0.0025 per share for orders that provide non-displayed liquidity, or $0.0015 per share for midpoint orders that provide liquidity.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed pricing for BDRK and BCST orders executed on BX is reasonable because it is the same as the current pricing for other routed order types, namely BSTG, BSCN, BMOP, BTFY and BCRT orders, executed on BX. The proposed fee for BDRK and BCST orders that execute on a venue other than BX is slightly more ($0.0003) than BTFY orders that execute on venues other than BX and much less than the fees for BSTG, BSCN and BMOP orders, which is reasonable because BDRK and BCST orders are routed only to low cost venues. Although BX will incur different costs depending upon the venues on which these routed orders are executed, BX is adopting a flat rate structure. Taking its costs into account, BX may operate at a slight gain or a slight loss for orders routed to and executed at other venues. BX believes that its proposed fees are reasonable because they are an approximation of the maximum fees BX will be charged for such executions, including its own costs. As a general matter, BX believes that the proposed fees will allow it to recoup and cover its costs of providing routing services and the value that [sic] provides to its participants who choose routing services.

The proposed pricing for BDRK and BCST orders is consistent with an equitable allocation of fees and is not unfairly discriminatory because the pricing, which is the same for all BX participants applies solely to members that opt to route BDRK and BCST orders. Moreover, the lower cost of these routing strategies as compared with other existing routing strategies is not unfairly discriminatory because it is consistent with the lower costs associated with routing to the venues that are accessed by the new strategies.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. BX believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the BX routing facility to route reflect changes in the cost of such routing.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order routing is extremely competitive, members may readily opt to disfavor BX's routing services if they believe that alternatives offer them better value. Moreover, by introducing new routing options and charging fees that BX believes to be reasonable, BX believes that it is increasing its competitiveness vis-à-vis other trading venues. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. BX also does not believe that the proposal raises issues of competition among its own market participants, because the proposal applies fee and credits equally to all participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by BX.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2013–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2013–019, and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05714 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69068; File No. SR–Phlx–2013–21]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Adopt New Exchange Rule 1047(f)(iv) Regarding Quoting Obligations

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Exchange Rule 1047(f)(iv) to provide for how the Exchange proposes to treat market-making quoting obligations, in response to the Regulation NMS Plan to Address Extraordinary Market Volatility.

The text of the proposed rule change is below; proposed new language is italicized.

* * * * *

Rule 1047. Trading Rotations, Halts and Suspensions

(a)–(e) No change.

(f) This paragraph shall be in effect during a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (''LULD Plan''). Capitalized terms used in this paragraph shall have the same meaning as provided for in the LULD Plan. During a Limit State and Straddle State in the Underlying NMS stock:

(i)–(iii) No change.

(iv) When evaluating whether a specialist or Registered Options Trader has met the continuous quoting obligations of Rule 1014(b)(ii)(D)(1) and (2) in options overlying NMS stocks, the Exchange will not consider as part of the trading day the time that an NMS stock underlying an option was in a Limit State or Straddle State.

(g) No change.

* * * Commentary:

.01–.03 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Exchange Rule 1047(f)(iv)[3] to provide for how the Exchange will treat market making quoting obligations in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''), which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47). The Exchange proposes to adopt new Rule 1047(f)(iv) for a pilot period that coincides with the pilot period for the Plan.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the equities exchanges and the Financial Industry Regulatory Authority (''FINRA'') have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses,[4] related changes to the equities market clearly erroneous execution rules,[5] and more stringent equities market maker quoting requirements.[6]

On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[7] In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.[8]

The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[9] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.

As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[10] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[11] All trading centers in

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The provisions of Rule 1047(f)(i)–(iii) were filed and became effective on February 28, 2013, with a 30 day operative delay, on a pilot basis. *See* SR–Phlx–2013–20.

[4] *See e.g.,* Exchange Rule 3100.

[5] *See e.g.,* Exchange Rule 3312.

[6] *See e.g.,* NASDAQ Rule 4613.

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving the Plan on a Pilot Basis).

[8] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[9] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[10] *See* Section V(A) of the Plan.

[11] *See* Section VI(A) of the Plan.

NMS stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[12] Trading in an NMS stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[13] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan, which would be applicable to all markets trading the security.[14] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore unexecutable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

Proposal

The Exchange proposes to adopt Rule 1047(f)(iv) to provide that the Exchange shall exclude the amount of time an NMS stock underlying a Phlx option is in a Limit State or Straddle State from the total amount of time in the trading day when calculating the percentage of the trading day specialists and Registered Options Traders (''ROTs'') are required to quote.

Currently, the quoting requirements appear in Rule 1014(b)(ii)(D)(1) and (2), which generally require that: (i) A Streaming Quote Trader (''SQT'') and a Remote Streaming Quote Trader (''RSQT'') shall be responsible to quote two-sided markets in not less than 60% of the series in which such SQT or RSQT is assigned; (ii) a Directed SQT (''DSQT'') or a Directed RSQT (''DRSQT'') shall be responsible to quote two-sided markets in the lesser of 99% of the series listed on the Exchange or 100% of the series listed on the Exchange minus one call-put pair, in each case in at least 60% of the options in which such DSQT or DRSQT is assigned; and (iii) the specialist (including the RSQT functioning as a Remote Specialist in particular options) shall be responsible to quote two-sided markets in the lesser of 99% of the series or 100% of the series minus one call-put pair in each option in which such specialist is assigned. To satisfy these requirements, they must be quoting such series 90% of the trading day as a percentage of the total number of minutes in such trading day.

The Exchange now proposes to subtract from the total number of minutes in a trading day the time period for an option when the underlying NMS stock was in a Limit State or Straddle State. The Exchange believes that this is appropriate for the same reasons discussed above, in light of the limited price discovery in the underlying stock and the direct relationship between an options price and the price of the underlying security. During a Limit State or Straddle State, the bid price or offer price of the underlying security will be unexecutable and the ability to hedge the purchase or sale of an option will be jeopardized. Recognizing that it may be impossible to hedge to offset the risk created by trading options, the Exchange expects that specialists and ROTs will, as a result, modify their quoting behavior. The Exchange believes it is reasonable and appropriate to exclude this time period, which the Exchange believes will generally be limited. Currently, the Exchange excludes the time period when an option is halted for the obvious reason that trades cannot occur and quotes are irrelevant during a halt.

The Exchange has considered waiving its bid/ask differential requirement (also known as quote spread parameters), but ultimately determined that those requirements should be maintained in order to promote liquidity and the operation of a fair and orderly market. Accordingly, even when the quoting obligation is not in effect, specialists and ROTs who choose to quote must do so within the applicable bid-ask differentials. The Exchange believes that this should help ensure the quality of the quotes that are entered and preserves one of the obligations of being a market maker.[15]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[16] in general, and with Section 6(b)(5) of the Act,[17] in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because the Exchange believes that excluding the Limit and Straddle State from a specialist's and ROT's quoting obligation calculation should promote just and equitable principles of trade by recognizing the particular risk that arises for liquidity providers who cannot hedge. Whenever an NMS stock is in a Limit State or Straddle State, trading continues; however, there will not be a reliable price for a security to serve as a benchmark for the price of the option. Accordingly, the Exchange seeks to expressly remove these periods from consideration in order to enable specialists and ROTs to provide the necessary liquidity and facilitate transactions on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all members subject to those obligations in the same manner. Nor will the proposal impose a burden on competition among the options exchanges, because, in

[12] *See* Section VI(A)(3) of the Plan.

[13] *See* Section VI(B)(1) of the Plan.

[14] The primary listing market would declare a Trading Pause in an NMS stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[15] Because they will continue to be subject to the market maker obligation of maintaining quotes within a certain bid/ask differentials, Specialists and ROTs will continue to be eligible for the various ''guarantees'' that are available to them including the Directed Order and size pro-rata allocations. *See* Rule 1080. The Exchange notes that it is technically complex, and therefore, impractical, to address this.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily operate on competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide liquidity during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2013–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2013–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2013–21 and should be submitted on or before March 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05743 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69067; File No. SR–EDGX–2013–11]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently offers Members a rebate of $0.0005 per share for Members' orders that route to Nasdaq OMX BX, Inc. (''BX'') and remove liquidity, yielding Flag C, in securities priced at or above $1.00. The Exchange proposes to decrease the rebate from $0.0005 per share to $0.0004 per share in response to BX's fee filing that was effective February 1, 2013.[4] Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, does not qualify for any of BX's volume tiered rebates.[5] DE Route passes through BX's default rebate to the Exchange and the Exchange, in turn, passes through the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

[4] *See* Securities Exchange Act Release No. 68909 (February 12, 2013), 78 FR 11935 (February 20, 2013) (SR–BX–2013–011).

[5] The Exchange notes that to the extent DE Route does achieve any volume tiered rebates on BX, its rates for Flag C will not change.

rebate to its Members. The Exchange notes that its proposal does not modify the current rate of 0.10% of the dollar value of the transaction that it charges Members for Flag C in securities priced below $1.00 that route to BX and remove liquidity.

In SR–EDGX–2012–47,[6] the Exchange introduced new Flags ZA and ZR for Members that utilize Retail Orders. Flag ZA is yielded for those Members that use Retail Orders that add liquidity to EDGX and is assigned a rebate of $0.0032 per share. Flag ZR is yielded for those Members that use Retail Orders that remove liquidity from EDGX and is assigned a charge of $0.0030 per share. Footnote 4 on the Exchange's current fee schedule defines a ''Retail Order'' as an (i) agency order that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology.

In this filing, the Exchange proposes to introduce a new ''Retail Order Tier'' that would provide that Members that add an average daily volume (''ADV'') of Retail Orders (Flag ZA) that is 0.25% or more of the Total Consolidated Volume (''TCV'') on a daily basis, measured monthly would receive a rebate on Flag ZA that is $0.0034 per share instead of the rate of $0.0032 per share currently assigned to Flag ZA. The Exchange notes that the rebate for Flag ZA in securities priced below $1.00 is not impacted by this proposal.

The Exchange also currently specifies, in part, in Footnote 4 that to the extent Members qualify for a rebate higher than $0.0032 per share through other volume tiers, such as the Mega Tier ($0.0035 per share) or Market Depth Tier ($0.0033 per share), Members will earn the higher rebate on Flag ZA instead of its assigned rate. The Exchange proposes to make a conforming amendment to this language to include the $0.0034 per share rebate. Therefore, the amended language would now read: ''The Exchange notes that to the extent Members qualify for a rebate higher than $0.0032 per share (for Flag ZA executions that do not qualify for the above tier) or $0.0034 per share (for Flag ZA executions qualifying for the above tier) through other volume tiers, such as the Mega Tier or Market Depth Tier, they will earn the higher rebate on Flag ZA instead of its assigned rate.''

The Exchange proposes to implement these amendments to its fee schedule on March 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage Members to send additional Retail Orders that add liquidity to the Exchange for execution in order to qualify for an incrementally higher rebate for such executions that add liquidity on the Exchange if Members satisfy the conditions of the Retail Order Tier. In this regard, the Exchange believes that maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The potential for increased volume from Retail Orders increases potential revenue to the Exchange, and allows the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs in turn would allow the Exchange to pass on the savings to Members in the form of lower fees. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange believes the $0.0034 rebate proposed for the Retail Order Tier is reasonable because it is directly related to a Member's level of Retail Order executions during the month. The Exchange also believes the proposed rebate of $0.0034 per share is reasonable because it is consistent with certain other rebates, such as the those found in tiers in Footnote 1 of its fee schedule (i.e., Market Depth Tier, Mega Tier rebate of $0.0032 per share, Ultra Tier), that is available to Members that satisfy certain criteria that is related to the Member's level of trading activity on the Exchange.

The Exchange believes that requiring a Member to submit an ADV of Retail Orders during a month of 0.25% or more of TCV is reasonable, equitable and not unfairly discriminatory because this percentage is within a range that the Exchange believes would incentivize Members to submit Retail Orders to the Exchange in order to qualify for the applicable rebate of $0.0034 per share. The Exchange notes that certain other existing pricing tiers within its fee schedule make rebates available to Members that are also based on the Member's level of activity as a percentage of TCV. These existing percentage thresholds, depending on other related factors and the level of the corresponding rebates, are both higher and lower than the 0.25% proposed herein.[9] Moreover, like existing pricing on the Exchange that is tied to Member's volume levels as a percentage of TCV, the proposed Retail Order is equitable and not unfairly discriminatory because it is available to all Members on an equal and non-discriminatory basis.

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[10] The Exchange believes that it is thus appropriate to create a financial incentive to bring more retail order flow

[6] *See* Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR–EDGX–2012–47).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* for example, the Market Depth Tier Rebate ($0.0033 per share rebate), Mega Tier rebate ($0.0032 per share), Ultra Tier rebate ($0.0031 per share rebate), and Super Tier rebate ($0.0031 per share rebate) that are all tied to a percentage of TCV.

[10] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

to a public market, such as the Exchange over off-exchange venues. The Exchange believes that investor protection and transparency is promoted by rewarding displayed liquidity on exchanges over off-exchange executions. By offering a proposed rebate of $0.0034 per share for the Retail Order Tier, the Exchange believes it will encourage use of Retail Orders, while maintaining consistency with the Exchange's overall pricing philosophy of encouraging displayed liquidity. The Exchange places a higher value on displayed liquidity because the Exchange believes that displayed liquidity is a public good that benefits investors and traders generally by providing greater price transparency and enhancing public price discovery, which ultimately lead to substantial reductions in transaction costs.

The Exchange also notes that the Retail Order Tier is reasonable in that NYSE Arca offers a comparable Retail Order Tier (with an analogous Retail Order definition) that provides a rebate of $0.0032 per share for the NYSE Arca's ETP Holders that execute an average daily volume of Retail Orders that is 0.40% or more of the TCV.[11]

The Exchange believes that its proposal to pass through BX's rebate of $0.0004 per share for orders that route to BX and remove liquidity (Flag C) represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BX through DE Route. Currently, BX offers a rebate to DE Route for orders that route to BX and remove liquidity, and DE Route passes through that rebate to the Exchange and the Exchange passes through that rebate to its Members. Effective February 1, 2012, BX rebates DE Route $0.0004 per share for orders that route to BX and remove liquidity. The Exchange's proposal will enable DE Route to pass through the $0.0004 per share rebate to the Exchange and the Exchange, in turn, to pass it through to its Members. The Exchange believes its proposal is equitable and reasonable because it allows the Exchange to continue to pass through BX's rebate to its Members. The Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that this proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, EDGX does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Regarding the Retail Order Tier, the Exchange believes that its proposal to offer a rebate of $0.0034 per share provided the Member satisfies the Retail Order Tier's conditions will increase competition for Retail Orders because it is comparable to the rates charged by NYSE Arca for its retail order tier. The Exchange believes its proposal will not burden intramarket competition given that the Exchange's rates apply uniformly to all Members that place orders.

Regarding Flag C's proposed reduction in rebate, the Exchange believes that its proposal to pass through BX's lower rebate of $0.0004 per share for securities priced at or above $1.00 that route to BX and remove liquidity will increase competition because it is comparable to the rates charged by BX for removing liquidity. The Exchange believes its proposal will not burden intramarket competition given that the Exchange's rates apply uniformly to all Members that place orders. The Exchange believes that its proposal will increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(2)[13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2013–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[11] *See* Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77). *See also, https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_2_26_13.pdf.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2013–11 and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05742 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69072; File No. SR–NASDAQ–2013–036]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to the Listing and Trading of the Shares of the First Trust Senior Loan Fund of First Trust Exchange-Traded Fund IV

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 21, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, which filing was amended and replaced in its entirety by Amendment No. 2 thereto on March 7, 2013, as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the First Trust Senior Loan Fund (the ''Fund'') of First Trust Exchange-Traded Fund IV (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares'').[4] The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[5] on the Exchange. The Fund will be an actively managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010. The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund is a series of the Trust.

Description of the Shares and the Fund

First Trust Advisors L.P. is the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (the ''Distributor'') is the principal underwriter and distributor of the Fund's Shares.[7] The Bank of New York Mellon Corporation (''BNY'') will act as the administrator, accounting agent, custodian and transfer agent to the Fund.[8]

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to

[3] Amendment No. 1 was filed on March 4, 2013 and withdrawn on March 5, 2013 to make a correction to a footnote.

[4] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). The Fund would not be the first actively-managed fund listed on the Exchange; *see* Securities Exchange Act Release No. 66175 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively managed WisdomTree funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.,* Securities Exchange Act Release No. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR–NYSE Arca-2011–21) (order approving listing and trading of WisdomTree Global Real Return Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] *See* Post-Effective Amendment No. 15 to Registration Statement on Form N–1A for the Trust, dated December 14, 2012 (File Nos. 333–174332 and 811–22559). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[7] The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act (the ''Exemptive Order''). *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on a fixed income portfolio (including without limitation exchange-traded notes and senior loans) or a portfolio invested in a combination of equity securities and fixed income securities, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. § 77a).

[8] The investment banking and custodial services departments at BNY are segregated and independent departments. BNY will not exercise any investment discretion with respect to the Fund.

information concerning the composition and/or changes to such investment company portfolio.[9] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with the Distributor, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-advisor.

First Trust Senior Loan Fund Principal Investments

The Fund's primary investment objective is to provide high current income. The Fund's secondary investment objective is the preservation of capital.

According to the Registration Statement, in pursuing its investment objective, the Fund, under normal market conditions,[10] will seek to outperform a primary and secondary loan index (as described below), by investing at least 80% of its net assets (plus any borrowings for investment purposes) in ''Senior Loans,'' which are described further below in ''Description of Senior Loans and the Senior Loan Market.'' The S&P/LSTA U.S. Leveraged Loan 100 Index (the ''Primary Index'') is comprised of the 100 largest Senior Loans, as measured by the borrowed amounts outstanding. The Markit iBoxx USD Leveraged Loan Index (the ''Secondary Index'') selects the 100 most liquid Senior Loans in the market. In addition to size, liquidity is also measured, in part, based on the number of market makers who trade a specific Senior Loan and the number and size of transactions in the context of the prevailing bid/offer spread. Markit utilizes proprietary models for the Secondary Index composition and updates to the Secondary Index. The Fund will not seek to track either the Primary or Secondary Index, but rather will seek to outperform those indices. It is anticipated that the Fund, in accordance with its principal investment strategy, will invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in and meet the liquidity thresholds of the Primary and/or the Secondary Indices. Each of the Fund's Senior Loan investments is expected to have no less than $250 million USD par outstanding.

The Adviser considers Senior Loans to be first lien senior secured floating rate bank loans. A Senior Loan is an advance or commitment of funds made by one or more banks or similar financial institutions to one or more corporations, partnerships or other business entities and typically pays interest at a floating or adjusting rate that is determined periodically at a designated premium above a base lending rate, most commonly the London-Interbank Offered Rate (''LIBOR''). A Senior Loan is considered senior to all other unsecured claims against the borrower, senior to or *pari passu* with all other secured claims, meaning that in the event of a bankruptcy the Senior Loan, together with other first lien claims, is entitled to be the first to be repaid out of proceeds of the assets securing the loans, before other existing unsecured claims or interests receive repayment. However, in bankruptcy proceedings, there may be other claims, such as taxes or additional advances which take precedence.[11]

The Fund will invest in Senior Loans that are made predominantly to businesses operating in North America, but may also invest in Senior Loans made to businesses operating outside of North America. The Fund may invest in Senior Loans directly, either from the borrower as part of a primary issuance or in the secondary market through assignments of portions of Senior Loans from third parties, or participations in Senior Loans, which are contractual relationships with an existing lender in a loan facility whereby the Fund purchases the right to receive principal and interest payments on a loan but the existing lender remains the record holder of the loan. Under normal market conditions, the Fund expects to maintain an average interest rate duration of less than 90 days.

In selecting securities for the Fund, the Adviser will seek to construct a portfolio of loans that it believes is less volatile than the general loan market. In addition, when making investments, the Adviser will seek to maintain appropriate liquidity and price transparency for the Fund. On an on-going basis, the Adviser will add or remove those individual loans that it believes will cause the Fund to outperform or underperform, respectively, either the Primary or Secondary Index. The Fund will include borrowers that the Adviser believes

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[10] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objective. Specifically, the Fund would continue to invest in Senior Loans (as defined herein). In response to prolonged periods of constrained or difficult market conditions the Adviser will likely focus on investing in the largest and most liquid loans available in the market.

[11] Senior Loans consist generally of obligations of companies and other entities (collectively, ''borrowers'') incurred for the purpose of reorganizing the assets and liabilities of a borrower; acquiring another company; taking over control of a company (leveraged buyout); temporary refinancing; or financing internal growth or other general business purposes. Senior Loans are often obligations of borrowers who have incurred a significant percentage of debt compared to equity issued and thus are highly leveraged.

have strong credit metrics, based on its evaluation of cash flows, collateral coverage and management teams. The key considerations of portfolio construction include liquidity, diversification and relative value.

When identifying prospective investment opportunities in Senior Loans, the Adviser currently intends to invest primarily in Senior Loans that are below investment grade quality and will rely on fundamental credit analysis in an effort to attempt to minimize the loss of the Fund's capital and to select assets that provide attractive relative value.[12] The Adviser expects to invest in Senior Loans or other debt of companies possessing the attributes described below, which it believes will help generate higher risk adjusted total returns.[13] The Adviser does not intend to purchase Senior Loans that are in default. However, the Fund may hold a Senior Loan that has defaulted subsequent to its purchase by the Fund.

The Adviser intends to invest in Senior Loans or other debt of companies that it believes have developed strong positions within their respective markets and exhibit the potential to maintain sufficient cash flows and profitability to service their obligations in a range of economic environments. The Adviser will seek to invest in Senior Loans or other debt of companies that it believes possess advantages in scale, scope, customer loyalty, product pricing, or product quality versus their competitors, thereby minimizing business risk and protecting profitability.

The Adviser will seek to invest in Senior Loans or other debt of established companies it believes have demonstrated a record of profitability and cash flows over several economic cycles. The Adviser does not intend to invest in Senior Loans or other debt of primarily start-up companies, companies in turnaround situations or companies with speculative business plans.

The Adviser intends to focus on investments in which the Senior Loans or other debt of a target company has an experienced management team with an established track record of success. The Adviser will typically require companies to have in place proper incentives to align management's goals with the Fund's goals.

The Adviser will seek to invest in a well-diversified portfolio of Senior Loans or other debt among borrowers and industries, thereby potentially reducing the risk of a downturn in any one company or industry having a disproportionate impact on the value of the Fund's holdings. Loans, and the collateral securing them, are typically monitored by agents for the lenders, which may be the originating bank or banks.[14]

Historically, the amount of public information available about a specific Senior Loan has been less extensive than if the loan were registered or exchange-traded. As noted above, the loans in which the Fund will invest will, in most instances, be Senior Loans, which are secured and senior to other indebtedness of the borrower. Each Senior Loan will generally be secured by collateral such as accounts receivable, inventory, equipment, real estate, intangible assets such as trademarks, copyrights and patents, and securities of subsidiaries or affiliates. The value of the collateral generally will be determined by reference to financial statements of the borrower, by an independent appraisal, by obtaining the market value of such collateral, in the case of cash or securities if readily ascertainable, or by other customary valuation techniques considered appropriate by the Adviser. The value of collateral may decline after the Fund's investment, and collateral may be difficult to sell in the event of default. Consequently, the Fund may not receive all the payments to which it is entitled. By virtue of their senior position and collateral, Senior Loans typically provide lenders with the first right to cash flows or proceeds from the sale of a borrower's collateral if the borrower becomes insolvent (subject to the limitations of bankruptcy law, which may provide higher priority to certain claims such as employee salaries, employee pensions, and taxes). This means Senior Loans are generally repaid before unsecured bank loans, corporate bonds, subordinated debt, trade creditors, and preferred or common stockholders. To the extent that the Fund invests in unsecured loans, if the borrower defaults on such loan, there is no specific collateral on which the lender can foreclose. If the borrower defaults on a subordinated loan, the collateral may not be sufficient to cover both the senior and subordinated loans.

There is no organized exchange on which loans are traded and reliable market quotations may not be readily available. A majority of the Fund's assets are likely to be invested in loans that are less liquid than securities traded on national exchanges. Loans with reduced liquidity involve greater risk than securities with more liquid markets. Available market quotations for such loans may vary over time, and if the credit quality of a loan unexpectedly declines, secondary trading of that loan may decline for a period of time. During periods of infrequent trading, valuing a loan can be more difficult and buying and selling a loan at an acceptable price can be more difficult and delayed. In the event that the Fund voluntarily or involuntarily liquidates Fund assets during periods of infrequent trading, it may not receive full value for those assets. Therefore, elements of judgment may play a greater role in valuation of loans. To the extent that a secondary market exists for certain loans, the market may be subject to irregular

[12] The Fund will primarily invest in securities (including Senior Loans) which typically will be rated below investment grade. Securities rated below investment grade, commonly referred to as ''junk'' or ''high yield'' securities, include securities that are rated Ba1/BB+/BB+ or below by Moody's Investors Service, Inc. (''Moody's''), Fitch Inc., or Standard & Poor's, Inc. (''S&P''), respectively, and may involve greater risks than securities in higher rating categories.

[13] The loan market, as represented by the S&P/LSTA (Loan Syndications and Trading Association) Leveraged Loan Index, experienced significant growth in terms of number and aggregate volume of loans outstanding since the inception of the index in 1997. In 1997, the total amount of loans in the market aggregated less than $10 billion. By April of 2000, it had grown to over $100 billion, and by July of 2007 the market had grown to over $500 billion. The size of the market peaked in November of 2008 at $594 billion. During this period, the demand for loans and the number of investors participating in the loan market also increased significantly. Since 2008, the aggregate size of the market has contracted, characterized by limited new loan issuance and payoffs of outstanding loans. From the peak in 2008 through July 2010, the overall size of the loan market contracted by approximately 15%. The number of market participants also decreased during that period. Although the number of new loans being issued in the market since 2010 is increasing, there can be no assurance that the size of the loan market, and the number of participants, will return to earlier levels. An increase in demand for Senior Loans may benefit the Fund by providing increased liquidity for such loans and higher sales prices, but it may also adversely affect the rate of interest payable on such loans acquired by the Fund and the rights provided to the Fund under the terms of the applicable loan agreement, and may increase the price of loans that the Fund wishes to purchase in the secondary market. A decrease in the demand for Senior Loans may adversely affect the price of loans in the Fund, which could cause the Fund's net asset value (''NAV'') to decline.

[14] The Fund may be reliant on the creditworthiness of the agent bank and other intermediate participants in a Senior Loan, in addition to the borrower, since rights that may exist under the loan against the borrower if the borrower defaults are typically asserted by or through the agent bank or intermediate participant. Agents are typically large commercial banks, although for Senior Loans that are not broadly syndicated they can also include thrift institutions, insurance companies or finance companies (or their affiliates). Such companies may be especially susceptible to the effects of changes in interest rates resulting from changes in U.S. or foreign fiscal or monetary policies, governmental regulations affecting capital raising activities or other economic or market fluctuations. It is the expectation that the Fund will only invest in broadly syndicated loans.

trading activity, wide bid/ask spreads and extended trade settlement periods.

Senior Loans will usually require, in addition to scheduled payments of interest and principal, the prepayment of the Senior Loan from free cash flow. The degree to which borrowers prepay Senior Loans, whether as a contractual requirement or at their election, may be affected by general business conditions, the financial condition of the borrower and competitive conditions among loan investors, among others. As such, prepayments cannot be predicted with accuracy. Recent market conditions, including falling default rates among others, have led to increased prepayment frequency and loan renegotiations. These renegotiations are often on terms more favorable to borrowers. Upon a prepayment, either in part or in full, the actual outstanding debt on which the Fund derives interest income will be reduced. However, the Fund may receive a prepayment penalty fee assessed against the prepaying borrower.

Other Investments

According to the Registration Statement, in addition to the principal investments described above, the Fund may invest in other investments, as described below. The Fund may invest in (1) fixed-rate or floating-rate income-producing securities (including U.S. government debt securities, investment grade and below-investment grade corporate debt securities), (2) preferred securities and (3) securities of other investment companies registered under the 1940 Act.[15]

The Fund will not invest in floating rate loans of companies whose financial condition is troubled or uncertain and that have defaulted on current debt obligations, as measured at the time of investment. Although many of the Fund's investments will consist of securities rated between the categories of BB and B as rated by S&P, the Fund reserves the right to invest in debt securities, including Senior Loans, of any credit quality, maturity and duration.

The Fund may invest in corporate debt securities issued by U.S. and non-U.S. companies of all kinds, including those with small, mid and large capitalizations. Corporate debt securities are issued by businesses to finance their operations. Notes, bonds, debentures and commercial paper are the most common types of corporate debt securities, with the primary difference being their maturities and secured or unsecured status. Commercial paper has the shortest term and is usually unsecured. Corporate debt may be rated investment grade[16] or below investment grade and may carry fixed or floating rates of interest.

The Fund may invest in debt securities issued by non-U.S. companies that are traded over-the-counter or listed on an exchange. Non-U.S. debt securities in which the Fund may invest include debt securities issued or guaranteed by companies organized under the laws of countries other than the United States, debt securities issued or guaranteed by foreign, national, provincial, state, municipal or other governments with taxing authority or by their agencies or instrumentalities and debt obligations of supranational governmental entities such as the World Bank or European Union. These debt securities may be U.S. dollar-denominated or non-U.S. dollar-denominated. Non-U.S. debt securities also include U.S. dollar-denominated debt obligations, such as ''Yankee Dollar'' obligations, of foreign issuers and of supranational government entities. Yankee Dollar obligations are U.S. dollar-denominated obligations issued in the U.S. capital markets by foreign corporations, banks and governments. Foreign debt securities also may be traded on foreign securities exchanges or in over-the-counter capital markets.

The Fund may invest in U.S. government securities. U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

The Fund may invest in short-term debt securities (as described herein), money market funds and other cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings may vary and depends on several factors, including market conditions.

Short-term debt securities are defined to include, without limitation, the following: (1) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[17] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations.

Under normal market conditions, up to 10% of the net assets of the Fund may be denominated in currencies other than the U.S. dollar. The Fund intends to hedge its non-U.S. dollar holdings. The Fund's currency exchange transactions will be conducted on a spot (*i.e.,* cash) basis at the spot rate prevailing in the currency exchange market. The cost of the Fund's currency exchange transactions will generally be the difference between the bid and offer spot rate of the currency being purchased or sold. In order to protect against uncertainty in the level of future

[15] The equity securities in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[16] According to the Adviser, ''investment grade'' means securities rated in the Baa/BBB categories or above by one or more Nationally Recognized Statistical Rating Organizations (''NRSROs''). If a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the lowest rating category received from an NRSRO. Rating categories may include sub-categories or gradations indicating relative standing.

[17] The Fund may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and its securities lending cash collateral. A repurchase agreement is an agreement under which the Fund acquires a financial instrument (e.g., a security issued by the U.S. government or an agency thereof, a banker's acceptance or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day). A repurchase agreement may be considered a loan collateralized by securities. In addition, the Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed upon price, date and interest payment and have the characteristics of borrowing. According to the Registration Statement, the Fund intends to enter into repurchase and reverse repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board. The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the action is entered into and at all times during the term of the agreement.

currency exchange rates, the Fund is authorized to enter into various currency exchange transactions.

As noted above, the Fund may invest in securities of other 1940 Act registered open-end or closed-end investment companies, including ETFs,[18] in the amounts that are permitted by the 1940 Act and the applicable Exemptive Order from the Commission granted to the Trust, on behalf of the Fund, but not to exceed 20% of the Fund's net assets. To the extent that an investment company invests primarily in a specified asset class held by the Fund, such an investment in the investment company will be deemed to be an investment in the underlying asset class for purposes of the Fund's investment limitations. In addition, the Fund may invest a portion of its assets in exchange-traded pooled investment vehicles (other than investment companies) that invest primarily in securities of the types in which the Fund may invest directly.

The Fund may receive equity, warrants, corporate bonds and other such securities as a result of the restructuring of the debt of an issuer, or a reorganization of a senior loan or bond, or acquired together with a high yield bond or senior loan(s) of an issuer. Such investments will be subject to the Fund's investment objectives, restrictions and strategies as described herein.

Subject to limitations, the Fund may invest in secured loans that are not first lien loans or loans that are unsecured. These loans have the same characteristics as Senior Loans except that such loans are not first in priority of repayment and/or may not be secured by collateral. Accordingly, the risks associated with these loans are higher than the risks for loans with first priority over the collateral. Because these loans are lower in priority and/or unsecured, they are subject to the additional risk that the cash flow of the borrower may be insufficient to meet scheduled payments after giving effect to the secured obligations of the borrower or in the case of a default, recoveries may be lower for unsecured loans than for secured loans.[19]

The Fund will not invest 25% or more of the value of its total assets in securities of issuers in any one industry.[20]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, junior subordinated loans and unsecured loans deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[21]

Except for investments in ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. equity issues.

The Fund will not invest in options contracts, futures contracts or swap agreements.

In certain situations or market conditions, the Fund may temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.[22] The Fund may borrow money from a bank as permitted by the 1940 Act or other governing statute, by applicable rules thereunder, or by Commission or other regulatory agency with authority over the Fund, but only for temporary or emergency purposes. The use of temporary investments is not a part of a principal investment strategy of the Fund.

The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act.[23]

The Fund intends to qualify for and to elect treatment as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.[24]

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Criteria To Be Applied to the Fund

While the Fund, which would be listed pursuant to the criteria applicable to actively managed funds under Nasdaq Rule 5735, is not eligible for listing under Nasdaq Rule 5705(b) applicable to listing and trading of Index Fund Shares based on a securities index, the Adviser represents that, under normal market conditions, the Fund would generally satisfy the generic fixed income initial listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase, as described below.[25]

[18] As described in the Registration Statement, an ETF is an investment company registered under the 1940 Act that holds a portfolio of securities generally designed to track the performance of a securities index, including industry, sector, country and region indexes. Such ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to the Exemptive Order. The ETFs in which the Fund may invest include Index Fund Shares and Portfolio Depositary Receipts (as described in NASDAQ Rule 5705); and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X or 3X) ETFs.

[19] Secured loans that are not first lien and loans that are unsecured generally have greater price volatility than Senior Loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in these loans, which would create greater credit risk exposure for the holders of such loans. Secured loans that are not first lien and loans that are unsecured share the same risks as other below investment grade instruments.

[20] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[21] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See* also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[22] *See supra* note 10.

[23] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a–5).

[24] 26 U.S.C. 851.

[25] Nasdaq Rule 5705(b)(4) sets forth generic listing criteria applicable to listing under Rule 19b–4(e) under the Exchange Act of Index Fund Shares (''IF Shares'' or ''Index Fund Shares'') based on an index or portfolio of ''Fixed Income Securities,'' which are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof. Nasdaq Rule 5705(b)(4)(A) is as follows: *Eligibility Criteria for Index Components.* Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b–4(e) under the Act, each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria: (i) The index or portfolio must consist of Fixed Income Securities; (ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of

With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(i), as noted in the Registration Statement, the Fund will invest at least 80% of its net assets (plus any borrowings for investment purposes) in Senior Loans. The Adviser expects that substantially all of the Fund's assets will be invested in Fixed Income Securities or cash/cash-like instruments. With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(ii), the Adviser expects that substantially all, but at least 75% of the Fund's portfolio will be invested in loans that have an aggregate outstanding exposure of greater than $100 million. With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(iii), the Adviser represents that the Fund will not typically invest in convertible securities; however, should the Fund make such investments, the Adviser would direct the Fund to divest any converted equity security as soon as practicable.

With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(iv), the Adviser represents that the Fund will not concentrate its investments in excess of 30% in any one security (excluding Treasury Securities), and will not invest more than 65% of its assets in five or fewer securities (excluding Treasury Securities).

With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(v), the Adviser represents that the Fund will invest in Senior Loans issued to at least 13 non-affiliated borrowers.

With respect to the requirements of Nasdaq Rule 5705(b)(4)(A)(vi), the Adviser represents that the Fund may make investments on a continuous basis in compliance with such requirement at the time of purchase; however, the market for Senior Loans differs in several material respects from the market of other fixed income securities (*e.g.,* bonds). A significant percentage of the Senior Loan market would not meet the criteria set forth in Nasdaq Rule 5705(b)(4)(A)(vi), but would be readily tradable in the secondary market. For the 12 month period ending August 12, 2012, 53.4% of the borrowers of primary Senior Loans (also known as leveraged loans) had total indebtedness of $1 billion or less and Senior Loans outstanding of $250 million or more. (Source: S&P). In order to add to the Fund's diversification and to expand the Fund's investment universe, the Fund may invest in Senior Loans borrowed by entities that would not meet the criteria set forth in Nasdaq Rule 5705(b)(4)(A)(vi) above provided the borrower has at least $250 million outstanding in Senior Loans. The Senior Loans borrowed by such entities would be well known to participants in the Senior Loan markets, would typically attract multiple market makers, and would share liquidity and transparency characteristics of senior secured debt borrowed by entities meeting the criteria in the generic listing criteria of Nasdaq Rule 5705(b)(4)(A).

Description of Senior Loans and the Senior Loan Market

The Adviser represents that Senior Loans represent debt obligations of sub-investment grade corporate borrowers, similar to high yield bonds; however, Senior Loans are different from traditional high yield bonds in several important respects. First, Senior Loans are typically senior to other obligations of the borrower and secured by the assets of the borrower. Senior Loans rank at the top of a borrower's capital structure in terms of priority of payment, ahead of any subordinated debt (high yield) or the borrower's common equity. These loans are also secured, as the holders of these loans have a lien on most if not all of the corporate borrower's plant, property, equipment, receivables, cash balances, licenses, trademarks, etc. Furthermore, the corporate borrower of Senior Loans executes a credit agreement that typically restricts what it can do (debt incurrence, asset dispositions, etc.) without the lenders' approval, and, in addition, often requires the borrower to meet certain ongoing financial covenants (EBITDA, leverage tests, etc.). Finally, Senior Loans are floating rate obligations which typically pay a fixed spread over 3 month LIBOR.

Institutional investors access the market today primarily through commingled funds or separately managed accounts. Individual investors have gained exposure to Senior Loans primarily through registered open-end or closed-end mutual funds and business development companies or occasionally through limited partnerships.

The performance of a Senior Loans portfolio is driven by credit selection. Investing in Senior Loans involves detailed credit analysis and sound investment judgment culminating in the timely payout of interest and ultimate return of principal. Loans are generally prepayable at any time, typically without penalty. Loans are typically purchased at close to 100 (''par'') and are also typically repaid at 100; the return to the investor comes from the quarterly interest coupons and the return of principal. Underperformance comes from making investment misjudgments whereby the corporate borrower fails to repay the loan at maturity or otherwise defaults on the obligation.[26]

The Adviser represents that the Senior Loan market, in terms of total outstanding loans by dollar volume is approximately equal in size to the high yield corporate bond market in the U.S.—between $1.2 trillion and $1.5 trillion. The market for Senior Loans is almost exclusively comprised of non-investment grade corporate borrowers. The Loan Syndication and Trading Association (''LSTA''), a trade group sponsored by both underwriters of and institutional investors in senior bank loans, has been tracking trading volumes and bid-offer spreads for the asset class since 2007. For the month ended June 30, 2012—a representative period—$30 billion of Senior Loans changed hands representing 1,109 individual transactions. (Source: LSTA.) Average quarterly Senior Loan trading volume exceeded $100 billion during 2011. Quarterly trading volumes fell modestly to $98 billion in the second calendar quarter of 2012.[27]

$100 million or more; (iii) A component may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the index or portfolio; (iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio; (v) An underlying index or portfolio (excluding exempted securities) must include a minimum of 13 non-affiliated issuers; and (vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

[26] Additional capital features inherent to Senior Loans include the following: such loans are subject to mandatory and discretionary prepayments and can be prepaid in full, often without penalty, for a variety of reasons; companies may opt to refinance an existing loan at a lower spread or repay the loan with a high yield bond issuance; required excess cash flow sweeps; covenants requiring loan prepayment from proceeds of asset sales; and quarterly amortization.

[27] As of October 2012, 195 open-ended loan funds and open-ended bond funds were invested in the Senior Loan market as a primary or secondary asset class. (Source: Morningstar.) As of October 2012, there were approximately $65 billion of assets under management in 39 open-ended loan funds and approximately $252 billion of assets under management in 158 open-ended high yield bond funds. Eighty-six of the 158 open-ended high yield

Continued

The Fund, as noted above, will primarily invest in the more liquid and higher rated segment of the Senior Loan market. The average credit rating of the Senior Loans that the Fund typically will hold will be rated between the categories of BB and B as rated by S&P. The most actively traded loans will generally have a tranche size outstanding (or total float of the issue) in excess of $250 million. The borrowers of these broadly syndicated bank loans will typically be followed by many ''buy-side'' and ''sell-side'' credit analysts who will in turn rely on the borrower to provide transparent financial information concerning its business performance and operating results. The Adviser represents that such borrowers typically provide significant financial transparency to the market through the delivery of financial statements on at least a quarterly basis as required by the executed credit agreements. Additionally, bid and offers in the Senior Loans are available throughout the trading day on larger Senior Loans issues with multiple dealer quotes available.

The Adviser represents that the underwriters, or agent banks, which distribute, syndicate and trade Senior Loans are among the largest global financial institutions, including JPMorgan, Bank of America, Citigroup, Goldman Sachs, Morgan Stanley, Wells Fargo, Deutsche Bank, Barclays, Credit Suisse and others. It is common for multiple firms to act as underwriters and market makers for a specific Senior Loan issue. For example, two underwriters may co-underwrite and fund a Senior Loan that has a $1 billion institutional tranche. One of the underwriters acting as syndication agent for the financing, will then draft an offering memorandum (similar to a prospectus for an initial public offering of equity securities), distribute it to potential investors, schedule management meetings with the largest loan investors and arrange a bank meeting that includes management presentations along with a question and answer session. The investor audience attends in person as well as via telephone with both live and recorded conference call options. After a two week syndication process where investors can complete their due diligence work with access to company management and underwriter bankers to answer credit questions, investors' commitments are collected by the underwriter. The underwriter will typically allocate the loan to 80–120 investors within the following week, with the largest position representing 3–5% of the tranche size in a successful syndication. The underwriters will both make executable two sided markets in the loan with eighth to a quarter point bid/ask spreads on sizes in the $2 million to $20 million range, depending on the issue. Other banks also have Senior Loan trading desks that make secondary bid/ask markets in the loans after they are allocated. Senior Loan investors can also obtain information on Senior Loans and their borrowers from numerous public sources, including Bloomberg, FactSet, public financial statement filings (Forms 10–K and 10–Q), and sell side research analysts.

The Adviser represents that the segment of the Senior Loan market that the Fund will focus on is highly liquid. Senior Loans of $250 million or more in issuance are typically quite liquid and will have multiple market makers and typically 75 or more institutional holders. The standard bid/offer spreads for such loans are ¼ to ½ point, although the largest firms can transact on a 1/8th point market across dealers for Senior Loans of $250 million or more outstanding.[28]

The Adviser represents that, while Senior Loans are not reported through TRACE,[29] there is significant transparency with dealers updating investors on trades and trading activity throughout the day. Dealers update their ''trading runs'' of Senior Loans throughout the day and distribute these via electronic messaging to the institutional investor community. The Adviser represents further that, upon commencement of trading in the Fund, the Adviser would ensure that all ''Authorized Participants'' (as described below) for the Fund were added to these intraday market maker Senior Loan ''trading runs.''

Description of the S&P/LSTA U.S. Leveraged Loan 100 Index[30]

The Primary Index is a market value-weighted index designed to measure the performance of the largest segment of the U.S. syndicated leveraged loan market. The Primary Index consists of 100 loan facilities drawn from a larger benchmark—the S&P/LSTA Leveraged Loan Index (''LLI''), which covers more than 900 facilities and, as of June 30, 2011, had a market value of more than US$ 490 billion. As of June 30, 2011, the Primary Index had a total market value of US$ 183.4 billion.

The Primary Index is designed to reflect the largest facilities in the leveraged loan market. It mirrors the market-weighted performance of the largest institutional leveraged loans based upon market weightings, spreads and interest payments.

The Primary Index is rules based, although the S&P/LSTA U.S. Leveraged Loan 100 Index Committee (the ''Index Committee,'' described below) reserves the right to exercise discretion when necessary.

The Primary Index is rebalanced semi-annually to avoid excessive turnover, but reviewed weekly to reflect pay-downs and ensure that the Primary Index portfolio maintains 100 loan facilities. The constituents of the Primary Index (the ''Index Loans'') are drawn from a universe of syndicated leveraged loans representing over 90% of the leveraged loan market.

All syndicated leveraged loans covered by the LLI universe are eligible for inclusion in the Primary Index. Term loans from syndicated credits must meet the following criteria at issuance in order to be eligible for inclusion in the LLI:

—Senior secured
—Minimum initial term of one year
—Minimum initial spread of LIBOR + 125 basis points
—US dollar denominated

All Primary Index loans must have a publicly assigned CUSIP.

According to the Primary Index Description, the Primary Index is designed to include the largest loan facilities from the LLI universe. Par outstanding is a key criterion for loan selection. Loan facilities are included if they are among the largest first lien facilities from the Primary Index in

bond funds made an allocation to Senior Loans, and, among high yield bond funds that had an allocation to Senior Loans, such allocation was 4.99% on average. (Source: Morningstar Direct.)

[28] The Exchange notes that the PowerShares Senior Loan Portfolio (Symbol: BKLN), is an index-based ETF listed on NYSE Arca since March 5, 2011 under NYSE Arca Equities Rule 5.2(j)(3). The underlying index for BKLN is the S&P/LSTA U.S. Leveraged Loan 100 Index, the Fund's Primary Index. As of November 20, 2012, BKLN had assets under management of approximately $1.28 billion. Since inception, BKLN's average daily trading volume has been 545,065 shares, with an average premium/discount to NAV of 0.43%.

[29] TRACE (Trade Reporting and Compliance Engine), is a vehicle developed by the Financial Industry Regulatory Authority (''FINRA'') that facilitates the mandatory over-the-counter secondary market transactions in eligible fixed income securities.

[30] The description herein of the Primary Index is based on information in ''S&P LSTA U.S. Leveraged Loan 100 Index Methodology, August 2011'' (''Primary Index Description''). S&P is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index.

terms of par amount outstanding. There is no minimum size requirement on individual facilities in the Primary Index, but the LLI universe minimum is US$ 50 million. Only the 100 largest first lien facilities from the LLI that meet all eligibility requirements are considered for inclusion. The Primary Index covers all borrowers regardless of origin; however, all facilities must be denominated in U.S. dollars.

A Primary Index addition is generally made only if a vacancy is created by a Primary Index deletion. Primary Index additions are reviewed on a weekly basis and are made according to par outstanding and overall liquidity. Liquidity is determined by the par outstanding and number of market bids available. Facilities are retired when they are no longer priced by ''LSTA/LPC Mark-to-Market Pricing'' or when the facility is repaid.[31]

Each loan facility's total return is calculated by aggregating the interest return, reflecting the return due to interest paid and accrued interest, and price return, reflecting the gains or losses due to changes in end-of-day prices and principal prepayments.

The Primary Index is maintained in accordance with the following rules:

—The Primary Index is reviewed each week to ensure that it includes 100 Index Loans.

—A complete review and rebalancing of all Primary Index constituents is completed on a semi-annual basis coinciding with the last weekly rebalance in June and in December.

—Eligible loan facilities approved by the Primary Index Committee are added to the Primary Index during the semi-annual rebalancing. Eligible loan facilities are added to the Primary Index at the weekly review only if other facilities are repaid or otherwise drop out of the Primary Index, in order to maintain 100 Index Loans.

—Any loan facility that fails to meet any of the eligibility criteria or that has a term to maturity less than or equal to 12 months plus 1 calendar day, as of the weekly rebalancing date, will not be included in the Primary Index.

—Par amounts of Primary Index loans will be adjusted on the weekly rebalancing date to reflect any changes that have occurred since the previous rebalancing date, due, for example, to partial pre-payments and pay-downs.[32]

—Constituent facilities are capped at 2% of the Primary Index and drawn-down at the weekly rebalancing. When a loan facility exceeds the 2% cap, the weight is reduced to 1.90% and the proceeds are invested in the other Primary Index components on a relative-weight basis.

The Primary Index is normally reviewed and rebalanced on a weekly basis to maintain 100 constituents. The Primary Index Committee (as described below), nevertheless, reserves the right to make adjustments to the Primary Index at any time that it believes appropriate.

Weekly Primary Index rebalancing maintenance (additions, deletions, pay-downs, and other changes to the Primary Index) is based on data as of Friday (or the last business day of the week in the case of holidays) and is announced the following Wednesday (or Tuesday in the case of a holiday) for implementation on the following Friday. Publicly available information, up to and including each Wednesday's close, is considered in each weekly rebalancing.

Primary Index changes published in the announcement generally are not subject to revision and will become effective on the date listed in the announcement.

The Primary Index Committee

The Primary Index Committee maintains the Primary Index.[33] The Primary Index Committee is comprised of employees of S&P. The Primary Index Committee is chaired by the Managing Director and Primary Index Committee Chairman at S&P.

Meetings are held annually and, from time to time, as needed. It is the sole responsibility of the Primary Index Committee to decide on all matters relating to methodology, maintenance, constituent selection and index procedures. The Primary Index Committee makes decisions based on all available information and Primary Index Committee discussions are kept confidential to avoid any unnecessary impact on market trading.

Markit iBoxx USD Liquid Leveraged Loan Index[34]

According to the Secondary Index Description, the Markit iBoxx USD Liquid Leveraged Loan Index is a subset of the benchmark Markit iBoxx USD Leveraged Loan Index (USD LLI). The Secondary Index limits the number of constituent loans by selecting larger and more liquid loans from the wider USD LLI index universe as determined by the Liquidity Ranking Procedure, described below. The procedure utilizes daily liquidity scores from the Markit Loan Pricing Service, which is a broader measure of liquidity, summarizing the performance of each loan across several liquidity metrics, such as number of quotes, or bid-offer sizes.[35]

The selection process for the Secondary Index will be used on the index inception date and at every monthly rebalancing (''Secondary Index Selection Date''). The selection process will involve the identification of the eligible universe using the eligibility criteria set out below. If the size of the eligible universe is greater than the target number of loans, the Liquidity Ranking Procedure will be used to determine the final index constituents. Once the index members are selected, they are automatically carried forward to the following month's selection, unless they no longer satisfy the eligibility criteria or enter a prolonged period of relative illiquidity. The Secondary Index eligibility criteria and the liquidity ranking procedure are described in further detail below.

The following six selection criteria are used to derive the eligible universe from the MarkitWSO USD- denominated loan universe: Loan type; minimum size; liquidity/depth of market; spread; credit rating; and minimum time to maturity.[36]

Only USD-denominated loans are eligible for the Secondary Index.

Eligible loan types are fully funded term loans (fixed and floating rate) and defaulted loans. Ineligible loan types are 364-day facility; delayed term loans; deposit-funded tranche; letters of credit; mezzanine; PIK Toggle; PIK; pre-funded

[31] LSTA/LPC Mark-to-Market Pricing is used to price each loan in the index. LSTA/LPC Mark-to-Market Pricing is based on bid/ask quotes gathered from dealers and is not based upon derived pricing models. The Primary Index uses the average bid for its market value calculation.

[32] The Adviser represents that loan prepayments in 2011 were 40% of the LLI and LTM September 30, 2012 are 28% (Source: LCD Quarterly Review, Third Quarter 2012). As a result of prepayments, the weighted average life of a loan is typically 2–3 years versus average maturity of 5–7 years. Existing investors in the Senior Loan may decline to participate in a loan refinancing that occurs at a lower spread in which case the loan would be repaid.

[33] The Primary Index Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index.

[34] The description herein of the Secondary Index is based on ''Markit iBoxx USD Liquid Leveraged Loan Index—Index Guide,'' September 2011 (''Secondary Index Description'').

[35] Markit is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Secondary Index.

[36] MarkitWSO is a corporate loan data base that Markit maintains using information provided by agent banks on each constituent Senior Loan in its data base of approximately 4,300 Senior Loans.

acquisition; revolving credit; strips; synthetic lease; and unfunded loans.

A minimum facility size of $500 million USD nominal is required to be eligible for the Secondary Index. A constituent is removed at the next rebalancing if its nominal outstanding falls below $500 million USD.

According to the Secondary Index Description, liquidity and depth of the market can be measured by the number of prices available for a particular loan and the length of time prices have been provided by the minimum required number of price contributors. The liquidity check is based on the 3-month period prior to the rebalancing cut-off date (liquidity test period). Only loans with a minimum liquidity/depth of 2 for at least 50% of trading days of the liquidity test period are eligible. Loans issued less than 3 months prior to the rebalancing cut-off date require a minimum liquidity/depth of 3 for at least 50% of trading days in the period from the issue date to the rebalancing cut-off date.

Only sub-investment grade loans are eligible for the Secondary Index. Each rated loan is assigned a composite index rating based on the ratings from Moody's and S&P's. If more than one agency publishes a rating for a loan, the average of the ratings determines the composite rating. The average rating is calculated as the numerical average of the ratings provided. To calculate the average, each rating assigned an integer number as follows: AAA/Aaa is assigned a 1, AA+/Aa1 a 2 etc. The resulting average is rounded to the nearest integer with .5 rounded up. Loans designated as ''Not Rated'' by both Moody's and S&P must have a minimum current spread of 125 basis points over LIBOR to be eligible for the Secondary Index. Loans designated as ''Not Rated'' are not assigned an index rating. Defaulted loans are eligible for the Secondary Index provided they meet all other criteria.[37]

The initial time to maturity is measured from the loan's issue date to its maturity date. A minimum initial time to maturity of one year is required for potential constituents. The minimum time to maturity threshold reduces the Secondary Index turnover and transaction costs associated with short-dated loans. Existing constituents with time to maturities of less than 1 year remain in the Secondary Index until maturity provided they meet all other eligibility criteria.

In order to determine the final Secondary Index constituents, the loans in the eligible universe are ranked according to their liquidity scores, as provided by the Markit Loan Pricing Service. Each loan in the MarkitWSO database[38] is assigned a daily score based on the loan's performance on the following liquidity metrics:

—Sources Quote: The number of dealers sending out runs.
—Frequency of Quotes: total number of dealer runs.
—Number of Sources with Size: The number of dealer runs with associated size.
—Bid-offer spreads: The average bid-offer spread in dealer runs.
—Average quote size: The average size parsed from quotes.
—Movers Count: The end of day composite contributions which have moved on that day.

Each loan carries a score ranging from 1 to 5 in ascending order of liquidity, depending on the daily values for the above components. A loan with a score of 1 will have the best performance in each of the categories above. In the liquidity ranking procedure described below, average liquidity scores are calculated for each loan, over a calendar one or three month period immediately preceding each rebalancing date.

On the Secondary Index inception day, the target number of loans will be 100. Loans will be removed from the Secondary Index if they are no longer present in the current eligible universe or are not ranked within the first 125 places in terms of 3 month average liquidity score. On every subsequent rebalancing, the number of new loans to be selected will be equal to the number of loans which will be removed from the Secondary Index.

According to the Secondary Index Description, the parameters used in the selection process, including the target number of loans and the eligibility criteria, are subject to an annual review process to ensure that the Secondary Index continues to reflect the underlying loans market. The results of the analysis are submitted to the oversight committee for the Markit iBoxx USD Leveraged Loan Indices (''Oversight Committee'').[39] The review will consist of a qualitative and quantitative assessment of any developments in the loans market in terms of market size, depth and overall liquidity conditions of the market together with a recommendation whether current index rules should be modified. Factors that will be considered in the assessment will include: size of the market; new issuance patterns and trends; outstanding number of loans and borrowers; and liquidity conditions.

All Markit iBoxx USD Leveraged Loan Indices are calculated at the end of each business day and re-balanced at the end of each month.

The Markit iBoxx USD Leveraged Loans Indices are calculated on the basis of end-of-day prices provided by Markit Loan Pricing services on each recommended Securities Industry and Financial Markets Association (''SIFMA'') U.S. trading day.

On each pricing day, end-of-day bid, mid and ask price quotes for the applicable loans are received from Markit Loan Pricing. Prices for all loans are taken at 4:15 p.m. Eastern time (''E.T.''). Secondary Index data is published and distributed on the next day by 8:00 a.m. E.T. and is available on the Markit index Web site, *http://indices.markit.com, and through Bloomberg and Reuters.*

Markit will provide bid, mid and ask prices for all eligible loans at the end of each index calculation day. Reference loan data will be provided by Markit, which represents up-to-date reference and transactional information on over 1,000 leveraged loans.

The Shares

The Fund will issue and redeem Shares only in Creation Units at the NAV next determined after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the New York Stock Exchange (''NYSE''), generally, 4:00 p.m. E.T. Creation Unit sizes will be 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the Authorized Participant agreement (as referred to below).

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (primarily Senior Loans) (the ''Deposit Securities'') per each Creation Unit and the Cash Component (defined below), computed as described below or (ii) the cash value of the Deposit Securities

[37] While the Secondary Index can include defaulting Senior Loans, the Adviser does not intend to invest in such loans.

[38] *See supra* note 36.

[39] The Oversight Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Secondary Index.

(''Deposit Cash'') and the ''Cash Component,'' computed as described below. The primary method of creation and redemption transactions will be in cash. In-kind creation and redemption transactions will be available only if requested by an Authorized Participant and approved by the Trust.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The ''Cash Component'' will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

According to the Registration Statement, to be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''); or (ii) a Depository Trust Company (''DTC'') participant. In addition, each Participating Party or DTC Participant (each, an ''Authorized Participant'') must execute an agreement that has been agreed to by the Principal Underwriter and the Transfer Agent, and that has been accepted by the Trust, with respect to purchases and redemptions of Creation Units.

The Custodian, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange's Regular Market Session (currently 9:30 a.m., E.T), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit is subject to any applicable adjustments as described below, in order to effect purchases of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day.

With respect to the Fund, the Custodian, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. E.T.) on each business day, the list of the names and share quantities of the Fund's portfolio securities (''Fund Securities'') or the required amount of Deposit Cash that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day. Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by the Custodian on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of the in-kind securities value representing one or more Fund Securities.

The creation/redemption order cut-off time for the Fund is expected to be 4:00 p.m. E.T. for purchases of Shares. On days when the Exchange closes earlier than normal, the Fund may require orders for Creation Units to be placed earlier in the day.

Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, are accrued daily and taken into account for purposes of determining NAV.[40] The NAV of the Fund will be calculated by the Custodian and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) on each day that such exchange is open, provided that fixed-income assets (and, accordingly, the Fund's NAV) may be valued as of the announced closing time for trading in fixed-income instruments on any day that SIFMA (or the applicable exchange or market on which the Fund's investments are traded) announces an early closing time. Creation/redemption order cut-off times may also be earlier on such days.

In calculating the Fund's NAV per Share, investments will generally be valued by using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer). The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Trust's Board from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures

[40] Markit will be the primary price source for Senior Loans in calculating the Fund's NAV. To the extent ''Other Investments'' are held, International Data Corporation (''IDC'') will be the primary price source for such investments.

require the Adviser's Pricing Committee to determine a security's fair value if a market price is not readily available.[41] In determining such value the Adviser's Pricing Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators (*e.g.,* movement in interest rates, market indices, and prices from the Fund's index providers). In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Availability of Information

The Distributor's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[42] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session[43] on the Exchange, the Fund will disclose on the Distributor's Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') (as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[44] On a daily basis, the Disclosed Portfolio will include each portfolio security, including Senior Loans, and other financial instruments of the Fund with the following information on the Fund's Web site: ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities (including Senior Loans) and financial instruments held in the Fund, and percentage weighting of the security and financial instrument in the Fund. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. In addition, during hours when the markets for local debt in the Fund's portfolio are closed, the Intraday Indicative Value will be updated at least every 15 seconds during the Regular Market Session to reflect currency exchange fluctuations. The Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a ''real-time'' update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Intra-day, executable price quotations of the Senior Loans, fixed income securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information is available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

In addition, a basket composition file, which includes the security names, amount and share quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of Nasdaq via NSCC. The basket represents one Creation Unit of the Fund.

The Primary Index description and Secondary Index description are publicly available. Primary and Secondary Index information, including values, components, and weightings, is updated and provided daily on a subscription basis by S&P and Markit. Complete methodologies for the Primary and Secondary Index are made available on the Web sites of S&P and Markit, respectively.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes is included in

[41] The Valuation Committee of the Trust's Board of Trustees is responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Valuation Committee has delegated day-to-day pricing responsibilities to the Adviser's Pricing Committee, which is composed of officers of the Adviser. The Pricing Committee is responsible for the valuation and revaluation of any portfolio investments for which market quotations or prices are not readily available. The Fund has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation and revaluation of any portfolio investments.

[42] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[43] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

[44] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [45] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121; for example, the Shares of the Fund will be halted if the ''circuit breaker'' parameters in Nasdaq Rule 4120(a)(11) are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 7:00 a.m. until 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[46] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[47]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Distributor's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act[48] in general and Section 6(b)(5) of the Act[49] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The equity securities in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a

[45] *See* 17 CFR 240.10A–3.

[46] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[47] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[48] 15 U.S.C. 78f.

[49] 15 U.S.C. 78f(b)(5).

comprehensive surveillance sharing agreement with the Exchange. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In pursuing its investment objective, the Fund seeks to outperform the Primary and Secondary Indices by normally investing at least 80% of its net assets (plus any borrowings for investment purposes) in Senior Loans. It is anticipated that the Fund, in accordance with its principal investment strategy, will invest 50% to 75% of its net assets in Senior Loans that are eligible for inclusion and meet the liquidity thresholds of the Primary and/or the Secondary Indices. Each of the Fund's Senior Loan investments will have no less than $250 million USD par outstanding. The Fund will not invest 25% or more of the value of its total assets in securities of borrowers in any one industry.[50] The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, junior subordinated loans and unsecured loans deemed illiquid by the Adviser. The Fund may also invest in (1) fixed-rate or floating-rate income-producing securities (including, without limitation, U.S. government debt securities, investment grade and below-investment grade corporate debt securities), (2) preferred securities, and (3) securities of other investment companies registered under the 1940 Act.[51] The Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage. The Fund will not invest in options contracts, futures contracts or swap agreements. The Adviser represents that, under normal market conditions, the Fund would generally satisfy the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase, as described above. Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. equity issues. The Primary Index Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index. The Oversight Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Secondary Index.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. S&P and Markit are not broker-dealers or affiliated with a broker-dealer and each has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index and Secondary Index, respectively.

The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on the Distributor's Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services. Intra-day, executable price quotations of the Senior Loans, fixed-income securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information is available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The Distributor's Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in Nasdaq Rule 4120(a)(11) have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Interactive Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market

[50] *See supra* note 20.

[51] The equity securities in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–036 and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05749 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69059; File No. SR–NYSEArca-2013–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Inc. Fee Schedule To Increase the Gross FOCUS Fee

March 7, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 26, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule to increase the gross FOCUS fee (''Gross FOCUS Fee''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to increase the Gross FOCUS Fee. The Exchange proposes to immediately reflect the proposed change in its Fee Schedule, but not to implement the proposed rate change until April 1, 2013.[4]

The Exchange currently charges each ETP Holder a monthly Gross FOCUS Fee of $0.07 per $1,000 of gross revenue reported on its FOCUS Report.[5] The Exchange proposes to increase the rate of the Gross FOCUS Fee from $0.07 per $1,000 of gross revenue to $0.075 per $1,000 of gross revenue.[6] The Exchange is proposing this increase in order to offset increased regulatory expenses. In this regard, the Exchange notes that it has not increased the Gross FOCUS Fee since June 2011.[7]

The Exchange allocates the funds collected pursuant to the Gross FOCUS Fee to fund the performance of its regulatory activities with respect to ETP

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange has proposed changes to the Fee Schedule, as reflected in the Exhibit 5 attached hereto, in a manner that would permit readers of the Fee Schedule to identify the proposed increase to the Gross FOCUS Fee that would be implemented on April 1, 2013.

[5] FOCUS is an acronym for Financial and Operational Combined Uniform Single Report. FOCUS Reports are filed periodically with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') as SEC Form X–17A–5 pursuant to Rule 17a–5 under the Act.

[6] The Exchange is also proposing to specify, as is the case today, that the Gross FOCUS Fee is charged monthly.

[7] *See* Securities Exchange Act Release No. 64595 (June 3, 2011), 76 FR 33795 (June 9, 2011) (SR–NYSEArca–2011–32).

Holders, including expenses associated with the regulatory functions performed both by NYSE Regulation, Inc. (''NYSE Regulation'') and by the Financial Industry Regulatory Authority, Inc. (''FINRA'') pursuant to a regulatory services agreement, for which FINRA is paid by NYSE Regulation.

The Exchange will monitor the amount of revenue collected from the Gross FOCUS Fee to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange expects to monitor regulatory costs and revenues on an annual basis, at a minimum. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange would adjust the Gross FOCUS Fee downward by submitting a fee change filing to the Commission.

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the increase in the Gross FOCUS Fee would permit the Exchange to offset increased regulatory expenses related to ETP Holders. In this regard, the Exchange notes that it has not increased the Gross FOCUS Fee since June 2011.[10]

The Exchange further believes that the level of the Gross FOCUS Fee is reasonable because it is expected to generate revenues that, when combined with the Exchange's other regulatory fees with respect to ETP Holders, will be less than or equal to the Exchange's regulatory costs. The Exchange believes that this is consistent with the Commission's previously stated view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

The Exchange further believes that the proposed change is equitable and not unfairly discriminatory because the Gross FOCUS Fee is assessed in an objective manner to all ETP Holders based on gross revenue reported on their FOCUS Reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issues. Rather, the proposed change is designed to permit the Exchange to adequately fund its regulatory activities in light of increased regulatory expenses related to ETP Holders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–23, and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05716 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See supra* note 7.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69064; File No. SR–CBOE–2013–028]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Volume Incentive Program (''VIP''). First, the Exchange proposes to add a column listing tier numbers for each percentage threshold[3] in the VIP. The lowest percentage threshold will be tier 1, the next will be tier 2, the next tier 3, and the highest percentage threshold will be tier 4. Neither the percentage threshold amounts nor the fee amounts will change.[4] The purpose of this change is to make it easier to refer to the different percentage thresholds.

Second, the Exchange proposes to adopt a separate credit structure in its VIP for complex orders. Specifically, all complex orders in tiers 2–4 of the VIP will accrue a per-contract credit of $0.17. As such, the tiers, thresholds and per-contract credits will be as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract credit (simple orders)	Per contract credit (complex orders)
1	0%–0.75	$0.00	$0.00
2	Above 0.75%–2.00	0.10	0.17
3	Above 2.00%–2.75	0.11	0.17
4	Above 2.75	0.14	0.17

The purpose of this proposed change is to incentivize the sending of complex orders to the Exchange.

The Exchange also proposes to amend the description of its SPX Tier Appointment fee. Currently, the SPX Tier Appointment fee is assessed to any Market-Maker Trading Permit Holder (''MMTPH'') that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month.[5] However, recently, CBOE Market-Maker firms have, in the process of switching around the Market-Makers to whom tier appointments are assigned, briefly picked up SPX Tier Appointments without the intention of acting as a Market-Maker in SPX. Nonetheless, even though such Market-Makers never engaged in SPX trading during the month, because they had an SPX Tier Appointment at any time during the calendar month, they were assessed the SPX Tier Appointment fee. Since the SPX Tier Appointment fee is intended to be assessed to MMTPHs who actually act as Market-Makers in SPX and engage in trading in SPX (as opposed to those who briefly pick up an SPX Tier Appointment), the Exchange proposes to add the stipulation that, in order for the SPX Tier Appointment to be assessed, an MMTPH must have an SPX Tier Appointment at any time during a calendar month and trade at least 100 SPX contracts while that appointment is active (or conduct any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month; that stipulation is not being amended). The 100-contract threshold allows for the possibility of a very small, unintentional SPX trade without incurring the SPX Tier Appointment fee (and is the same threshold used by the Exchange for the VIX Tier Appointment fee).[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''percentage thresholds'' refer to the column of the VIP table in the Exchange Fees Schedule entitled ''Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)''.

[4] The Commission notes that it understands the Exchange to mean that the credit amounts in the Exchange's VIP for simple orders will not change as a result of the new tier numbers.

[5] *See* CBOE Fees Schedule, SPX Tier Appointment fee description in the Trading Permit and Tier Appointment Fees table.

[6] *See* CBOE Fees Schedule, VIX Tier Appointment fee description in the Trading Permit and Tier Appointment Fees table.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Adding a column listing tier numbers for each percentage threshold is intended to make it easier to refer to the different percentage thresholds. This should prevent any potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed adoption of a separate set of VIP credits for complex orders is reasonable because it provides for a higher VIP credit for such orders than previously existed. Providing a higher credit for complex orders than for simple orders, and providing a credit for tiers 2–4 (and not tier 1), is equitable and not unfairly discriminatory because this is intended to incentivize the sending of more complex orders to the Exchange. This should provide greater liquidity and trading opportunities, both for market participants who send simple orders to the Exchange (as simple orders can trade with the legs of complex orders) and for those who only reach tier 1 of the VIP (indeed, this increased volume may allow for such market participants to reach the higher tiers in the VIP). As such, the greater liquidity and trading opportunities should benefit not just public customers (whose orders are the only ones that qualify for the VIP) but all market participants.

The Exchange believes that establishing the stipulation that a TPH that does not conduct any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month but does have an SPX Tier Appointment at any time during the calendar month will only be assessed the SPX Tier Appointment fee if such TPX also trades at least 100 SPX contracts while that appointment is active is reasonable because it will prevent MMTPHs who do not trade SPX or intend to trade SPX from being assessed the SPX Tier Appointment fee. This proposed change is equitable and not unfairly discriminatory for the same reason; the SPX Tier Appointment fee is intended to be assessed to MMTPHs who act as Market-Makers in SPX, not those who accidentally pick up an SPX Tier Appointment, and the proposed change will prevent such MMTPHs from being assessed the SPX Tier Appointment fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the adoption of higher VIP credits for complex orders will impose an unnecessary burden on intramarket competition because such credits will apply to the same market participants as the VIP previously applied (public customers). Moreover, these higher credits for complex orders are intended to incentivize the sending of more complex orders to the Exchange. This should provide greater liquidity and trading opportunities, both for market participants who send simple orders to the Exchange (as simple orders can trade with the legs of complex orders) and for those who only reach tier 1 of the VIP (indeed, this increased volume may allow for such market participants to reach the higher tiers in the VIP). As such, the greater liquidity and trading opportunities should benefit not just public customers, but all market participants.

The Exchange does not believe that the proposed change to adopt different, higher VIP credits for complex orders will impose an unnecessary burden on intermarket competition. Indeed, the proposed change should place the Exchange on a better competitive footing to attract complex orders, which benefits market participants at other exchanges by providing them with another, more attractive exchange to which to send complex orders. To the extent that the proposed change is attractive to such market participants on other exchanges, they may always elect to become CBOE market participants and execute orders (complex and simple) on CBOE. The Exchange does not believe that the proposed change to the SPX Tier Appointment fee description will impose an unnecessary burden on intramarket competition because it will only apply to MMTPHs, as they are the only market participants to whom the SPX Tier Appointment fee applies. The Exchange does not believe that the proposed change to the SPX Tier Appointment fee description will impose an unnecessary burden on intermarket competition because SPX is only traded on CBOE, and the proposed change only applies to CBOE MMTPHs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–028, and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05740 Filed 3–12–13; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69066; File No. SR–EDGA–2013–10]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2013, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently offers Members a rebate of $0.0014 per share for Members' orders that route to Nasdaq OMX BX, Inc. (''BX'') and remove liquidity, yielding Flag C, in securities priced at or above $1.00. The Exchange proposes to decrease the rebate from $0.0014 per share to $0.0010 per share in response to BX's fee filing that was effective February 1, 2013.[4] Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, qualifies for BX's volume tiered rebate of $0.0010 per share by adding an average of 25,000 shares but less than 1 million shares per day.[5] DE Route passes through the rebate to the Exchange and the Exchange, in turn, passes through the rebate to its Members. The Exchange notes that its proposal does not modify the current rate of 0.10% of the dollar value of the transaction that it charges Members for Flag C in securities priced below $1.00 that route to BX and remove liquidity.

The Exchange proposes to add a step-up tier to Footnote 4 of its fee schedule. A Member, at a Market Participant Identifier (''MPID'') level, will qualify for the ''Single MPID Step-up Add Tier'' by posting more than .10% of the Total Consolidated Volume (''TCV''), on a daily basis, measured monthly, on EDGA more than that MPID's December 2012 added TCV (the ''December Baseline''). The volume generated from non-displayed flags that add liquidity will count towards the Single MPID Step-up Add Tier. If the MPID meets this criterion, then the Exchange will assess that MPID a reduced charge of $0.0005 per share for Flags B, V, Y, 3 and 4 instead of its default rate of $0.0006 per share.[6] The Exchange notes that where a MPID's December Baseline is zero, the Exchange will apply a default baseline of 10 million shares. The Exchange believes that the Single MPID Step-up Add Tier will encourage market participants to grow their volume over an established baseline in order to achieve the volume tiered pricing. The Exchange notes that Footnote 4 is already appended to Flags B, V, Y, 3, and 4.

The Exchange proposes to implement these amendments to its fee schedule on March 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that its proposal to pass through BX's rebate of $0.0010 per share for orders that route

[3] As defined in Exchange Rule 1.5(n).

[4] *See* Securities Exchange Act Release No. 68909 (February 12, 2013), 78 FR 11935 (February 20, 2013) (SR–BX–2013–011).

[5] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered rebate on BX, its rate for Flag C will not change.

[6] Where ''default'' refers to the standard rate that the Exchange charges its Members for orders that add, remove, or route liquidity from the Exchange absent Members qualifying for additional volume tiered pricing. The Exchange maintains default rates for securities at or above $1.00 and securities priced below $1.00 for orders that add, remove, and route liquidity. The Exchange notes that a Member may qualify for a higher rebate if the Member satisfies the volume tier requirements outlined in Footnotes 1, 2, 4, 6, 16 and 17 of the fee schedule for securities priced at or above $1.00. The Exchange notes that the volume from securities priced below $1.00 contributes toward volume tiered requirements for securities priced at or above $1.00 as outlined in Footnotes 1, 2, 4, 6, 16 and 17 of the fee schedule. Unless otherwise stated in Footnotes 1 and 2 of the fee schedule, the Exchange does not offer volume tiered pricing for securities priced below $1.00.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

to BX and remove liquidity (Flag C) represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BX through DE Route. Currently, BX offers a rebate to DE Route for orders that route to BX and remove liquidity, and DE Route passes through that rebate to the Exchange and the Exchange passes through that rebate to its Members. As of February 1, 2012, BX rebates DE Route $0.0010 per share for orders that route to BX and remove liquidity provided that DE Route achieves the required volume on BX to qualify for such tier. Therefore, the Exchange's proposal will enable DE Route to pass through BX's rebate of $0.0010 per share, and DE Route, in turn, may pass through the rebate of $0.0010 per share to the Exchange and the Exchange, in turn, pass through the rebate of $0.0010 per share to its Members. The Exchange believes its proposal is equitable and reasonable because it allows the Exchange to continue to pass through BX's rebate to its Members. The Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that this proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that the proposed Single MPID Step-up Add Tier is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The requirements of the Single MPID Step-up Add Tier to post more than .10% of the TCV on EDGA, on a daily basis, measured monthly more than the MPID's December Baseline incentivizes substantial volume from Members (on an MPID basis) that generally add volume to the Exchange by offering MPIDs a discounted removal rate of $0.0005 per share. The Exchange also believes that establishing an MPID's December Baseline rewards liquidity provision attributes and encourages price discovery and market transparency by encouraging growth in liquidity over a defined baseline. The Exchange believes the Single MPID Step-up Add Tier will also encourage certain market participants, who are not currently adders, to grow their add volume over an established baseline of 10 million shares set by the Exchange in order to achieve the tier. In addition, the Exchange believes that this proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes the Single MPID Step-up Add Tier will increase and attract volume to the Exchange. Therefore, the Exchange can discount the removal rate from the default rate of $0.0006 per share to $0.0005 per share. The increased volume increases potential revenue to the Exchange, and allows the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs in turn would allow the Exchange to pass on the savings to Members in the form of lower fees. The increased liquidity benefits all investors by deepening EDGA's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

In addition, the criteria for the Single MPID Step-up Add Tier is also reasonable as compared to similar pricing mechanisms employed by Nasdaq that also offers rebates and tiers to add liquidity through a single MPID.[9] The concept of a single MPID also encourages those MPIDs that do the most to enhance EDGA's market quality through unified management of a high volume of added liquidity. EDGA also wishes to ensure that its fee schedule does not provide excessive encouragement to Members to aggregate the activity of several firms for the sole purpose of achieving a tiered discounted rate. Thus, a Member that is not able to achieve the requisite level of liquidity provision will not be able to meet the threshold by coordinating and consolidating the trading activity of other related firms using multiple MPIDs. EDGA believes that it is reasonable and equitable to offer a discounted rate to Members that provide volume through a single MPID because EDGA believes that such Members are most likely to provide consistent liquidity during periods of market stress and to manage their quotes/orders in a coordinated manner that promotes price discovery and market stability.

The Single MPID Step-up Add Tier is also reasonable in that NYSE Arca[10] offers its customers a step-up tier for Tape C securities that discount the default removal rate of $0.0030 per share when a baseline ADV is achieved. The Tape C Step Up Tier requires customers to add in excess of the greater of (i) 0.10% of US Tape C ADV over a January 2012 benchmark or (ii) 20% more than their January 2012 benchmark to earn a discounted removal rate of $0.0029 per share.

The Exchange's discounted rate from its default rate of $0.0006 per share to $0.0005 per share for Members that achieve the Single MPID Step-up Tier is also reasonable because it is within the range of discounts offered by BATS BYX, where the default rate to add liquidity is $0.0005 per share and customers that qualify for the tiers pay rates ranging from $0.0002–$0.00025 per share.[11]

Additionally, defaulting the baseline to a set volume (i.e., 10 million shares) is also reasonable as Nasdaq defaults its baseline for its Investor Support Program to a baseline.[12] In addition,

[9] *See* Nasdaq OMX, Price List—Trading & Connectivity, *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[10] *See* NYSE Arca Equities Trading Fees, *https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_2_26_13.pdf. See also* Securities Exchange Release No. 66568 (March 9, 2012), 77 FR 15819 (March 16, 2012) (SR–NYSEARCA–2012–17).

[11] *See* Securities Exchange Act Release No. 68665 (January 16, 2013), 78 FR 4946 (January 23, 2013) (SR–BYX–2013–001).

[12] *See* Nasdaq Rule 7014, which provides that ''[a] member wishing to participate in the Investor Support Program (''ISP'') must submit an application in the form prescribed by Nasdaq and designate one or more of its Nasdaq ports for ISP use. By participating in the ISP and entering in the Nasdaq Market Center eligible orders in System Securities, a member may qualify for a monthly ISP fee credit.'' Nasdaq Rule 7014(c)(1) provides that ''a [Nasdaq] member shall be entitled to receive an ISP credit at the $0.00005 rate with respect to all shares of displayed liquidity that are executed at a price of $1 or more in the Nasdaq Market Center during a given month if: (A) The member's ISP Execution Ration for the month in question is less than 10; (B) the shares of liquidity provided by the member through ISP-designated ports during the month are equal to or greater than 0.2% of the Consolidated Volume during the month; (C) at least 30% of the liquidity provided by the member during the month is provided through ISP-designated ports; and (D) the member's Participation Ratio for the month equals or exceeds its Baseline Participation Ratio.'' Nasdaq Rule 7014(k)(1) further states that ''[t]he term 'Baseline Participation Ratio,' shall mean, with respect to a member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and *provided further that if the result is zero for either month, the Baseline Participation Ratio shall be*

defaulting to a baseline of 10 million shares enables the Exchange to offer the tier only to those Members (on an MPID level) that satisfy it over an Exchange-established baseline instead of zero volume for the month of December 2012.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, EDGA does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Regarding Flag C's proposed reduction in rebate, the Exchange believes that its proposal to pass through BX's lower rebate of $0.0010 per share for securities priced at or above $1.00 that route to BX and remove liquidity will increase competition because it is comparable to the rates charged by BX for removing liquidity. The Exchange believes its proposal will not burden intramarket competition given that the Exchange's rates apply uniformly to all Members that place orders. The Exchange believes that its proposal will increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

Regarding the Single MPID Step-up Add Tier, EDGA believes that its proposal to offer such tier will increase competition as it will allow EDGA to compete with BATS BYX as a result of their January 2013 pricing change.[13] The Exchange believes its proposal will not burden intramarket competition given that the Exchange's rates apply uniformly to all Members that place orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(2) [15] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2013–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2013–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2013–10 and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05741 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69054; File No. SR–BOX–2013–09]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule for Trading on BOX

March 7, 2013.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the

deemed to be 0.485% (when rounded to three decimal places).'' (emphasis added). *See also* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (SR–NASDAQ–2010–141).

[13] *See* Securities Exchange Act Release No. 68665 (January 16, 2013), 78 FR 4946 (January 23, 2013) (SR–BYX–2013–001).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule for trading on the BOX Market LLC (''BOX'') options facility. In particular, the Exchange proposes to extend a pilot program applicable to Liquidity Fees and Credits for PIP Transactions through August 31, 2013 (the ''Program''). The Program has been in effect on BOX since February 2012 and is scheduled to expire February 28, 2013. While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on March 1, 2013. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX. In particular, the Exchange proposes to extend a pilot program applicable to Liquidity Fees and Credits for PIP Transactions through August 31, 2013 (the ''Program''). The Program has been in effect on BOX since February 2012 and is scheduled to expire February 28, 2013.[5]

Transactions in the BOX PIP are assessed either a fee for adding liquidity or provided a credit for removing liquidity regardless of account type. PIP Orders (*i.e.,* the agency orders opposite the Primary Improvement Order [6]) receive the ''removal'' credit and Improvement Orders [7] are charged the ''add'' fee. In particular, the Program permits a fee for adding liquidity or a credit for removing liquidity of $0.75, regardless of account type, for PIP transactions where the minimum price variation is greater than $0.01 (*i.e.,* all non-Penny Pilot Classes, and Penny Pilot Classes where the trade price is equal to or greater than $3.00, excluding QQQ, SPY, and IWM).[8] The Exchange proposes that this $0.75 liquidity fee and credit applicable to these PIP transactions continue to be operative on a pilot basis until August 31, 2013, in addition to any applicable Exchange Fees as described in Section I of the Fee Schedule.

In connection with the pilot, the Exchange agrees to submit to the Commission on a monthly basis during the pilot period, and make publicly available on the Exchange Web site: (A) PIP transaction data in series traded in penny increments compared to series traded in nickel increments, subdivided by when BOX is at the NBBO and when BOX is not at the NBBO, including: (1) Volume by number of contracts traded; (2) number of contracts executed by the Initiating Participant as compared to others (''retention rate''); (3) percentage of contracts receiving price improvement when the Initiating Participant is the contra party and when others are the contra party; (4) average number of participants responding in the PIP; (5) average price improvement amount when the Initiating Participant is the contra party; (6) average price improvement amount when others are the contra party; and (7) percentage of contracts receiving price improvement greater than $0.01, $0.02 and $0.03 when the Initiating Participant is the contra party and when others are the contra party; and (B) effective spread data for PIP transactions, specifically (1) average effective spread; (2) median effective spread; and (3) mode of the effective spread.[9] This data will allow the Commission to further evaluate the effect of the fee structure on competition and the extent of price improvement for orders executed in the PIP, in the affected series, over a longer period of time with a data set less subject to the effect of potentially anomalous periods.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(4) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Options Participants and other persons using its facilities. Specifically, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act,[12] which, among other things, requires that rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers, and Section 6(b)(8) of the Act,[13] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the

[5] *See* Securities Exchange Act Release Nos. 62512 (January 31, 2012), 77 FR 5590 (February 3, 2012) (Commission Order Granting Accelerated Approval of the BOX Credits and Fees for PIP Transactions on a pilot basis) (SR–BX–2011–046), and 66979 (May 14, 2012), 77 FR 29740 (May 18, 2012) (Notice of Filing and Immediate Effectiveness to adopt the Fee Schedule for trading on BOX which included the Program) (SR–BOX–2012–002).

[6] An Improvement Order is a response to a PIP auction.

[7] A Primary Improvement Order is the matching contra order submitted to the PIP on the opposite side of an agency order.

[8] The Exchange notes that the Program also includes a fee for adding liquidity or a credit for removing liquidity of $0.30, regardless of account type, for PIP transactions where the minimum price variation is $0.01 (Penny Pilot classes where trade price is less than $3.00, and all series in QQQ, SPY & IWM).

[9] ''Effective spread'' as provided will be the execution price of the PIP Order to buy less the midpoint of the NBBO at the time the PIP begins, multiplied by two, and the midpoint of the NBBO at the time the PIP begins less the execution price of the PIP Order to sell, multiplied by two.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(8).

purposes of the Act. In particular, the proposed extension will allow the Program to remain in effect without interruption.

The Exchange believes that it is reasonable and equitable to provide the proposed credit to any Participant that removes liquidity from the BOX PIP. The Exchange further believes these credits will attract order flow to BOX, resulting in greater liquidity to the benefit of all market participants. The Exchange believes that the proposed fees for adding liquidity and credits for removing liquidity are equitable and not unfairly discriminatory because such fees and credits apply uniformly to all categories of Participants, across all account types.

Further, the Exchange believes the proposed fees for PIP transactions to be reasonable. BOX operates within a highly competitive market in which market participants can readily direct order flow to any of several other competing venues if they deem fee levels at a particular venue to be excessive. The BOX credits and fees for PIP transactions are intended to attract order flow to BOX by offering incentives to all market participants to submit their orders to the PIP for potential price improvement. BOX notes that the fees collected will not necessarily result in additional revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract additional order flow to the PIP. BOX believes it is appropriate to provide incentives to market participants to use PIP, resulting in potential benefit to customers through potential price improvement, and to all market participants from greater liquidity on BOX.

In particular, the proposed change will allow the fees charged on BOX to remain competitive with other exchanges as well as apply such fees in a manner which is equitable among all BOX Participants. The Exchange believes that the PIP transaction fees and credits it assesses are fair and reasonable and must be competitive with fees and credits in place on other exchanges.

During the Program, BOX has provided the Commission data so the Commission could assess the impact of the Program on the competitiveness of the PIP auction and extent of price improvement obtained for customers. The reports in Exhibit 3 to the Form 19b–4 include statistics on percent and amount of price improvement, the number of responders to a PIP auction, and the retention rates of Initiating Participants and those market makers who received PIP directed orders. This data also includes information on both penny and non-penny series, although the Program only applies to PIP transactions in non-penny series.

Overall, the data shows that BOX's PIP provides very significant price improvement for non-penny series both before and during the Program. Thus, the data provided by BOX for the non-penny series does not suggest any significant adverse impact of the Program on the competitiveness of the PIP auction or the extent of price improvement for orders executed in the PIP in those series. PIP execution quality data is relevant for the consideration of broker-dealers when managing their best execution obligations.

The Exchange believes the data provided reflects no adverse impact of the Program on the competitiveness of the PIP auction or the extent of price improvement in series that trade in non-penny increments. As such, the Exchange believes the proposed rule change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

While some have argued that the Program creates a disparity between the fees an Initiating Participant pays and the fees a competitive responder pays in the PIP that may make the Program discriminatory and an undue burden on competition, the Exchange believes the Program provides incentives for market participants to submit customer order flow to BOX and thus, creates a greater opportunity for retail customers to receive additional price improvement. The PIP provides the opportunity for market participants to compete for customer orders, and has no limitations regarding the number of Market Makers, Options Participants that are not Market Makers, and customers that can participate and compete for orders in the PIP. BOX asserts that Participants are actively competing for customer orders, which is clearly supported by the simple fact that price improvement occurs in the PIP. Since the PIP began in 2004, customers have received more than $400 million in savings through better executions on BOX, a monthly average of more than $3.5 million over that time.

BOX notes that its market model and fees are generally intended to benefit retail customers by providing incentives for Participants to submit their customer order flow to BOX, and the PIP in particular. BOX makes a substantial amount of PIP-related data and statistics available to the public on its Web site *www.boxexchange.com*. Specifically, daily PIP volumes and average price improvement are available at: *http://boxexchange.com/volumes_en;* and BOX execution quality reports at: *http://boxexchange.com/executionQualityReport_en*. The data indisputably supports that the PIP provides price improvement for customer orders.

Additionally, the Exchange believes the Program is more transparent than payment for order flow (''PFOF'') arrangements and notes its belief that the credit to remove liquidity on BOX is generally less than what firms receive through PFOF.

For the reasons stated above, the Exchange does not believe that the proposed rule change will impose any burden on competition either among BOX Participants, or among the various options exchanges, that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [14] and Rule 19b–4(f)(2) thereunder,[15] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–BOX–2013–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–09 and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05715 Filed 3–12–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8236]

Waiver of Restriction on Assistance to the Central Government of Swaziland

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Swaziland and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: October 2, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05806 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8235]

Waiver of Restriction on Assistance to the Central Government of Zimbabwe

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Zimbabwe and I hereby report the waiver of this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: October 2, 2012.

Thomas R. Nides

Deputy Secretary for Management and Resources.

[FR Doc. 2013–05804 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8224]

Waiver of Restriction on Assistance to the Central Government of South Sudan

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to South Sudan, and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register.**

Dated: February 24, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05827 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8231]

Waiver of Restriction on Assistance to the Central Government of the Democratic Republic of Congo

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1–2) of the Act with respect to the Democratic Republic of Congo and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: February 24, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

[FR Doc. 2013–05800 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8229]

Waiver of Restriction on Assistance to the Central Government of Gabon

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div I, P.L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Gabon and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: June 27, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05792 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8232]

Waiver of Restriction on Assistance to the Central Government of Chad

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Chad and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: March 20, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05798 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8233]

Waiver of Restriction on Assistance to the Central Government of Ethiopia

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Ethiopia and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: June 7, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05796 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8230]

Waiver of Restriction on Assistance to the Central Government of Angola

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Angola and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: June 13, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05795 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8228]

Waiver of Restriction on Assistance to the Central Government of Cameroon

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division I, Pub. L.112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Cameroon, and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: September 7, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05818 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8226]

Waiver of Restriction on Assistance to the Central Government of the Central African Republic

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to the Central African Republic and I hereby report the waiver of this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: November 16, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05822 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8225]

Waiver of Restriction on Assistance to the Central Government of Guinea

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Guinea and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: August 21, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05825 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8234]

Waiver of Restriction on Assistance to the Central Government of Cote d'Ivoire

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Cote d'Ivoire and I hereby waive of this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: April 23, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources .

Editorial Note: This document was received in the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05808 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8223]

Waiver of Restriction on Assistance to the Central Government of Niger

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1–2) of the Act with respect to Niger and I hereby report the waiver of this restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

[FR Doc. 2013–05829 Filed 3–12–13; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF TRANSPORTATION

Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

AGENCY: ITS Joint Program Office, Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The Intelligent Transportation Systems (ITS) Program Advisory Committee (ITS PAC) will hold a meeting on March 27, 2013, from 8:00 a.m. to 4:00 p.m. (EST), and on March 28, 2013, from 8:00 a.m. to 4:00 p.m. (EST) in the Admiral II and III rooms of the Courtyard Marriott Capitol Hill/ Navy Yard Hotel, 140 L Street SE., Washington, DC 20003.

The ITS PAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-established under Section 53003 of Public Law 112–141, Moving Ahead for Progress in the 21st Century, July 6, 2012, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office (JPO), the ITS PAC makes recommendations to the Secretary regarding ITS Program needs, objectives, plans, approaches, content, and progress.

The following is a summary of the meeting tentative agenda. March 27: (1) ITS JPO Activities Update, (2) Safety Pilot Program Update, and (3) Shared Use Frequency Spectrum Issues Update. March 28: (1) NHTSA Rule-making Process Overview, (2) Subcommittee Break-out Meetings, and (3) Subcommittee Reports.

The meeting will be open to the public, but limited space will be available on a first-come, first-served basis. Members of the public who wish to present oral statements at the meeting must request approval from Mr. Stephen Glasscock, the Committee Designated Federal Official, at (202) 366–9126, not later than March 20, 2013.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue SE, HOIT, Washington, DC 20590 or faxed to (202) 493–2027. The ITS Joint Program Office requests that written comments be submitted not later than March 20, 2013.

Notice of this meeting is provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 4th day of March 2013.

Kenneth M. Leonard,

Director, ITS Joint Program Office.

[FR Doc. 2013–05482 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Meeting: RTCA Special Committee 227, Standards of Navigation Performance

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 227, Standards of Navigation Performance.

SUMMARY: The FAA is issuing this notice to advise the public of the fourth meeting of the RTCA Special Committee 227, Standards of Navigation Performance.

DATES: The meeting will be held April 8–17, 2013 from 9:00 a.m.–5:00 p.m. Contact Dave Nakamura by telephone at 425–965–6896 or email *dave.nakamura@boeing.com.*

ADDRESSES: The meeting will be held at RTCA, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662 or (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* In addition, Jennifer Iversen may be contacted directly at email: *jiversen@rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 227. The agenda will include the following:

April 8–17, 2013

- Welcome/Introductions/Administrative Remarks
- Agenda Overview
- Review of Planned Work Program for the Week
- Plenary FRAC Review of MASPS—Resolution of comments
- Technical Requirements Breakout Session (Everyday as appropriate)
- Other Business
- Next Meeting
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 1, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–05748 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twelfth Meeting: RTCA Special Committee 225, Rechargeable Lithium Battery and Battery Systems—Small and Medium Size

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting notice of RTCA Special Committee 225, Rechargeable Lithium Battery and Battery Systems—Small and Medium Size.

SUMMARY: The FAA is issuing this notice to advise the public of the twelfth meeting of the RTCA Special Committee 225, Rechargeable Lithium Battery and Battery Systems—Small and Medium Size.

DATES: The meeting will be held April 2–5, 2013, from 8:30 a.m.–5:30 p.m.

ADDRESSES: The meeting will be held at the RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662/(202) 833–9339, fax (202) 833–9434, or Web site at *http://www.rtca.org.* In addition, Jennifer Iversen may be contacted directly at email: *jiversen@rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 225. The agenda will include the following:

Tuesday, April 2, 2013

- Introductions and administrative items.
- Review agenda.
- Review and approval of summary from last Plenary meeting.
- Working Group review and disposition FRAC comments.
- Review action items.

Wednesday, April 3, 2013

- Review agenda, other actions.
- Review and approve working group disposition of FRAC comments.
- Working Group review and disposition FRAC comments.

Thursday, April 4, 2013

- Review agenda, other actions.
- Review and approve working group disposition of FRAC comments.
- Working Group review and disposition FRAC comments.

Friday, April 5, 2013

- Review agenda, other actions.
- Review schedule for upcoming Plenaries, working group meetings, and document preparation.
- Review and approve working group disposition of FRAC comments.
- Review and approve working group disposition of FRAC comments.
- Establish agenda for the next Plenary.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 1, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–05747 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–08]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number

involved and must be received on or before April 2, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0455 using any of the following methods:

• *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Theresa White, ANM–113, Standardization Branch, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057; email: *theresa.j.white@faa.gov;* (425) 227–2956; Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email: *andrea.copeland@faa.gov;* (202) 267–3664. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 7, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–0455.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 25.791(a), (b); 25.807(b), (c)(1), (c)(5), (c)(6); 25.809(f)(1); 25.813(f); 25.857(e), and 25.1447(c)(1).

Description of Relief Sought: Relief from the requirements in the listed sections to allow the carriage of up to two (2) persons (supernumeraries) in the flight deck in addition to the two (2) flight crew members, in lieu of four (4) crewmembers only.

[FR Doc. 2013–05790 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0014]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 19 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before April 12, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0014 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

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

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 19 individuals listed in this

notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Christopher W. Bailey

Mr. Bailey, 35, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bailey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bailey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Kent S. Bills

Mr. Bills, 52, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bills understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bills meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Indiana.

Bobby B. Brown

Mr. Brown, 23, has had ITDM since 1998. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class M operator's license from Virginia.

Maryland A. Chandler

Mr. Chandler, 68, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Chandler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chandler meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Kentucky.

Ronald D. Clark

Mr. Clark, 53, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Clark understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Clark meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

Larry L. Eberly

Mr. Eberly, 62, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Eberly understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eberly meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Steven J. Fessler

Mr. Fessler, 54, has had ITDM since 1973. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fessler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fessler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Michael R. Fisher

Mr. Fisher, 43, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fisher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fisher meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Mark A. Krause

Mr. Krause, 48, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Krause understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Krause meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Jeffrey G. Morford

Mr. Morford, 57, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morford meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Patrick L. Morningstar

Mr. Morningstar, 46, has had ITDM since 2002. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morningstar understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morningstar meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Maryland.

Charles R. Plummer

Mr. Plummer, 57, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Plummer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Plummer meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Ohio.

Grady W. Reed

Mr. Reed, 26, has had ITDM since 1999. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reed understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reed meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from the District of Columbia.

Russell L. Stiley

Mr. Stiley, 68, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stiley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stiley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado.

Gary T. Stoutamyer

Mr. Stoutamyer, 61, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stoutamyer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stoutamyer meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Virginia.

Thomas M. Van Camp

Mr. Van Camp, 56, has had ITDM since 1971. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Van Camp understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Van Camp meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have active diabetic retinopathy. He holds a Class A CDL from Iowa.

Jack K. Webster

Mr. Webster, 45, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Webster understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Webster meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kentucky.

Harry V. Wilhite, Jr.

Mr. Wilhite, 59, has had ITDM since 1985. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilhite understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilhite meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alabama.

Robert G. Young

Mr. Young, 54, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Young understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Young meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oklahoma.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: February 28, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–05738 Filed 3–12–13; 8:45 am]

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[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–8398; FMCSA–2002–13411; FMCSA–2005–20027]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 5 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 5, 2013. Comments must be received on or before April 12, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: [Docket No. FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–8398; FMCSA–2002–13411; FMCSA–2005–20027] using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf*.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 5 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 5 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Richard D. Carlson (MN)
Robert P. Conrad, Sr. (MD)
Donald P. Dodson, Jr. (WV)
James A. Stoudt (PA)
Ralph A. Thompson (KY)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 5 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 65 FR 20245; 65 FR 57230; 65 FR 78256; 66 FR 16311; 66 FR 17994; 67 FR 57266; 67 FR 76439; 68 FR 10298; 68 FR 13360; 68 FR 15037; 69 FR 52741; 70 FR 12265; 70 FR 14747; 70 FR 16887; 70 FR 2701; 70 FR 7545; 72 FR 12665; 74 FR 9329; 76 FR 15360). Each of these 5 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 12, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 5 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 4, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–05746 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Service Level Environmental Impact Statement for the Texas Oklahoma Passenger Rail Study Corridor, South Texas to Oklahoma City

AGENCY: Federal Railroad Administration (FRA).

ACTION: Notice of Intent To Prepare an Environmental Impact Statement (EIS).

SUMMARY: FRA is issuing this notice to advise the public that it will prepare a Service Level/Tier 1 EIS with the Texas Department of Transportation (TxDOT) to study potential new and/or improved high-speed intercity passenger rail service along an 850-mile corridor

extending from Oklahoma City, Oklahoma, to the south Texas cities of Laredo and Brownsville (proposed action). In addition to the Service Level EIS, the Texas Oklahoma Passenger Rail Study (Study) also includes preparation of a service development plan for the corridor for each of three sections of the corridor: Oklahoma City to Dallas/Fort Worth, Dallas/Fort Worth to San Antonio, and San Antonio to south Texas. The Oklahoma Department of Transportation (ODOT) is a partnering state agency in the development of the EIS. The Service Level EIS will evaluate a reasonable range of corridor alternatives and make decisions regarding the preferred corridor, location of train service termini, location of intermediate stops, the level of service, and future planning for projects to implement the service. Alternatives under consideration will include a No Action (No Build) alternative, as well as multiple build alternatives. The build alternatives may include infrastructure improvements in existing or prior rail corridors, the development of one or more new rail corridors, or a combination of both, as well as varying levels of service. FRA is issuing this Notice to solicit public and agency input in the development of the scope of the EIS and to advise the public that FRA and TxDOT will conduct outreach activities regarding the scope of the EIS. To ensure all significant issues are identified and considered, the public is invited to comment on the scope of the EIS, including the purpose and need, alternatives to be considered, impacts to be evaluated, and methodologies to be used in the evaluation.

DATES: Written comments on the scope of the Service Level EIS for the Texas Oklahoma Passenger Rail Study should be provided to TxDOT by April 26, 2013. Comments will also be accepted at public scoping meetings to be held from March 25, 2013, through April 4, 2013, at the times and locations identified below:

- Oklahoma City: Metro Tech Center, 1900 Springlake Drive, Oklahoma City, OK on March 25, 2013 from 2 p.m. through 4 p.m. and from 6 p.m. through 8 p.m.
- Ardmore: Ardmore Train Station, 251 E. Main Street, Ardmore, OK on March 26, 2013 from 6 p.m. through 8 p.m.
- Sherman: Sherman Senior Center, 1500 N. Broughton Street, Sherman, TX on April 2, 2013 from 6 p.m. through 8 p.m.
- Fort Worth: TxDOT Training Offices, 2501 SW Loop 820, Fort Worth, TX on March 28, 2013 from 6 p.m. through 8 p.m.
- Dallas: MSDC Offices, 8828 N. Stemmons Freeway, Dallas, TX on April 3, 2013 from 2 p.m. through 4 p.m. and from 6 p.m. through 8 p.m.
- Belton: Central Texas Council of Governments, 2180 N, Main Street, Belton, TX on April 1, 2013 from 6 p.m. through 8 p.m.
- Waco: Heart of Texas Council of Governments, 1514 S. New Road, Waco, TX on March 25, 2013 from 6 p.m. through 8 p.m.
- Austin: TxDOT Austin Office, Building 7, 7901 N. IH 35, Austin, TX on March 27, 2013 from 2 p.m. through 4 p.m. and from 6 p.m. through 8 p.m.
- Windcrest: Windcrest Civic Center, 9310 Jim Seal Drive, Windcrest, TX on April 1, 2013 from 6 p.m. through 8 p.m.
- Harlingen: Harlingen City Hall, 502 E. Tyler Avenue, Harlingen, TX on April 4, 2013 from 6 p.m. through 8 p.m.
- Corpus Christi: TxDOT Offices, 1701 S. Padre Island Drive, Corpus Christi, TX on April 2, 2013 from 6 p.m. through 8 p.m.
- Laredo: TxDOT Offices, 1817 Bob Bullock Avenue, Laredo, TX on April 3, 2013 from 6 p.m. through 8 p.m.

ADDRESSES: Written comments on the scope of this study should be mailed or emailed to Mr. Mark Werner, Rail Division, Texas Department of Transportation, 125 E. 11th Street, Austin, TX 78701–2483. The email address is provided on the project Web site: *www.txokrail.org*.

The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in the meetings should contact Mr. Mark Werner, Project Manager, Texas Department of Transportation, (512) 486–5137, seven calendar days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Werner, Project Manager, TxDOT, 125 E. 11th Street, Austin, TX 78701–2483, (512) 486–5137; or Ms. Catherine Dobbs, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–6347 . Information and documents regarding the Service Level EIS and environmental process will be made available for the duration of the environmental process at: *www.txokrail.org*.

SUPPLEMENTARY INFORMATION:

I. Environmental Review Process

The Service Level (Tier 1) EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA and the FRA's Procedures for Considering Environmental Impacts as set forth in 64 FR 28545 dated May 26, 1999 (Environmental Procedures). The Service Level EIS will also address Section 106 of the National Historic Preservation Act, Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. 303) and other applicable Federal and state laws and regulations. The Service Level EIS and any subsequent project (Tier 2) environmental documents will be developed in accordance with CEQ regulations, FRA's Environmental Procedures, and FRA's Update to NEPA Implementing Procedures (78 FR 2713; January 14, 2013).

FRA and TxDOT will use a tiered process, as provided for in 40 CFR 1508.28, in the completion of the environmental review of the Study. ''Tiering'' is a staged environmental review process applied to environmental reviews for complex projects. The Service Level EIS will address first tier of broad corridor issues and alternatives. Subsequent project-level second tier NEPA evaluations will analyze site-specific projects based on the decisions made at the Service Level. The Service Level NEPA assessment will result in an EIS with the appropriate level of detail for corridor decisions and will address broad overall issues of concern, including but not limited to:

- Confirm the purpose and need for the proposed action.
- Confirm the study area appropriate to assess reasonable alternatives.
- Identify a comprehensive set of goals and objectives for the corridor in conjunction with stakeholders. These goals and objectives will be crafted to allow comprehensive evaluation of all aspects of study alternatives necessary to achieve the goals, including train operations, vehicles, and infrastructure.
- Develop alternative evaluation criteria based on purpose and need, goals and objectives.
- Identify the range of reasonable alternatives to be considered, consistent with the current and planned use of the corridor and the existing services within and adjacent to the study area, as well as considering a no action/no build alternative.
- Identify the general corridor alignment(s) and right-of-way requirements of the reasonable build alternatives.

• Identify, at a corridor planning level, the infrastructure and equipment investment requirements for the reasonable build alternatives.

• Include the consideration of the No-Build Alternative which will be studied as the baseline for comparison with the build alternatives. The No-Build Alternative represents other transportation modes such as auto, air travel, intercity bus, and existing rail and the physical characteristics and capacities as they exist at the time of the Service Level EIS, with planned and funded improvements that will be in place at the time rail improvements would become operational.

• Evaluate and describe, at a corridor planning level, the potential environmental consequences (benefits and adverse effects to the human and natural environment) associated with the reasonable alternatives.

• Establish the timing and sequencing and future NEPA processes for component actions to implement the proposed action.

• Identify preferred alternatives for corridor route alignment within each of the three corridor sections.

Subsequent to this Service Level EIS, project level assessment(s) will address component projects to be implemented within the selected general corridor and where appropriate will incorporate by reference the data and evaluations included in the Service Level EIS. Subsequent evaluations will concentrate on the issues specific to the component of the alternative selected with the Service Level EIS, identify the Project alternatives that meet the purpose and need for each component project, and analyze the specific environmental consequences and measures necessary to mitigate environmental impacts at a site-specific level of detail. This Service Level EIS process will be coordinated with the ongoing preliminary engineering and environmental planning efforts for the Dallas/Fort Worth—Houston passenger rail corridor.

II. Project Background

The 850-mile Texas Oklahoma Passenger Rail Study Corridor extends from Oklahoma City in the north through Dallas, Fort Worth, Austin, and San Antonio to destinations in south Texas including Laredo, Corpus Christi, and Brownsville. Existing passenger rail service includes intercity service on the Heartland Flyer (Oklahoma City to Fort Worth), Texas Eagle (Fort Worth to San Antonio), and Sunset Limited (Los Angeles to New Orleans via San Antonio) operated by Amtrak, and regional/commuter rail service on the Trinity Railway Express (Dallas to Fort Worth) and Capital MetroRail (Austin) operated by Texas operators. Intercity passenger rail between Oklahoma City and San Antonio provides service to cities and communities generally along the Interstate 35 (I–35) corridor. The purpose of Study is to evaluate alternatives to provide higher speed passenger rail service to meet future intercity travel demand and to improve rail facilities, reduce journey times, and improve connections with regional public transit services. These improvements are needed because of the current and forecast population and business growth within the study area that has resulted in growing congestion on highways and rail services along the Interstate 35 (I–35) corridor.

The I–35 corridor, running from Duluth, Minnesota, to Laredo, Texas, is a congressionally identified corridor of national significance and is one of the fastest growing regions in the U.S., running through six of the largest urban areas and nine of the 50 largest cities in the U.S. International truck traffic demand, intercity truck traffic demand, and passenger travel demand compete for highway capacity, creating substantial congestion inside the urban areas through which the highway runs. Projections for the Dallas/Fort Worth to San Antonio portion of the corridor show average speeds along I–35 would drop from 55 to 15 miles per hour by 2035.

Transportation plans for Texas and Oklahoma have identified substantial population growth and population aging within the Study corridor. Texas population is expected to grow by 39% from 2010 to 2035. The population of the Texas Triangle (a region of Texas bounded by Dallas, Houston, and San Antonio) has been growing rapidly over the last several decades, with growth rates in some areas as high as 27%. Texas' population has grown making it the second most populous state in the U.S. with most of the state's population centered in the eastern half of the state, along and east of the I–35 corridor. Oklahoma City is expected to see a population increase of 25% from 2000 to 2035, with intensified population densities in the metropolitan area. Populations within the Study area are also aging, with the percentage of people who are 65 years old or older expected to grow from about 13% to nearly 20% by 2030 in Oklahoma and from 10% to over 17% in Texas, with the aging population expected to rely more heavily on public transportation such as intercity rail. Long range transportation plans in Texas and Oklahoma have identified the need to improve passenger rail services to meet the future demand brought on by these changes in population.

While a common need exists for increased passenger rail service across the 850-mile Study corridor, the corridor has been divided into three sections where the passenger rail needs and opportunities within each section, while interdependent, are distinct. Each section will both be evaluated separately by section and as parts of the overall rail corridor in the Service Level EIS.

The north section between Oklahoma City and Dallas/Fort Worth has existing intercity passenger rail service (Heartland Flyer) with one train in each direction per day, where annual ridership has increased by as much as 10% within the last three years. In this section, over 60% of train passengers would otherwise have taken private vehicles and up to 29% of passengers would otherwise have not made the journey. This passenger rail service is constrained by operation on a busy freight railroad line resulting in delays and schedules with inconvenient layovers for connecting with other rail or transit services in Fort Worth. Rail improvement planning in this section has identified the need for enhanced railroad facilities and better coordination with other connecting passenger rail services to increase the attractiveness of rail as a travel mode choice. Additional needs in this section include direct connection to the City of Dallas and the Dallas/Fort Worth airport (DFW), improved train control systems to increase train speed and allow safe operation of increased numbers of freight and passenger trains within the existing rail corridor, and additional roadway/railroad grade separations to enhance safety where rail and roadways cross.

The central section between Dallas/Fort Worth and San Antonio via Austin has existing intercity passenger rail service in the form of the Texas Eagle, the southernmost portion of daily Amtrak service between Chicago and San Antonio. From Fort Worth, there are daily connections with the Heartland Flyer providing intercity rail service north to Oklahoma City. From San Antonio, there are connections with the Sunset Limited running three times weekly east to New Orleans and west to Los Angeles. Approximately 23% of Amtrak train trips ending in Texas originate within the state.

The central section is characterized by the highest level of intercity travel demand within the state. This is, in part, a result of its linking three of the four largest metropolitan areas within the state, all of which are projected to

continue to grow in the future. The central section, via existing I–35, is characterized by substantially higher automobile and truck volumes than any other intercity corridor in the state. These volumes are projected to increase steadily through 2035, by which time traffic volumes are projected to result in freeway speeds as low as 15 miles per hour, contributing to very substantial delays. Air travel between the central section termini (i.e., Dallas/Fort Worth and San Antonio) is characterized by higher passenger volumes than any other intrastate connection. With the exception of the Dallas/Fort Worth-to-Houston connection, air travel demand between Dallas/Fort Worth and San Antonio is more than twice the demand of any other intrastate intercity connection. Enhanced passenger rail service in the central section would serve a clear need for additional transportation capacity and options. It would assist in meeting the strong demand for intercity travel in this highly populated corridor, thereby diverting some of the heavy automobile and truck volumes occurring at present and projected for the future.

The southern section between San Antonio and the cities of Laredo, Corpus Christi, and Brownsville does not have passenger rail services. Instead, Amtrak provides passenger service south of San Antonio by motor coach. The border areas of Brownsville and Laredo have heavy commercial truck traffic on the highways and freight traffic along existing freight railroad lines. The growing congestion in the border cities is affecting the economic viability of the region. Other intercity public transportation, including transportation to other destinations in the U.S. and Mexico, is provided by motor coaches operated by an assortment of Mexican and U.S. operators. A need exists to provide travel mode options to address future passenger travel demand in this area and reduce roadway congestion resulting from the passenger buses combined with commercial truck traffic. Rail service in this section would provide an efficient, safe, equitable, and affordable alternative to highway, bus, or air travel. In this section, cross-border travel demand to Mexican destinations such as Monterrey, a major business hub, results in strong potential passenger rail demand.

III. Scoping and Public Involvement

FRA encourages broad participation in the Service Level EIS process during scoping and subsequent review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to ensure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether areas of environmental concern exist where the potential may exist for significant impacts identifiable at a corridor level. Appropriate Federal, State, and local agencies and appropriate railroads are being notified of the proposed Project and comments are being solicited. Public agencies with jurisdiction are requested to advise the FRA and TxDOT of the applicable permit and environmental review requirements of each agency and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed improvements.

An iterative public involvement/information program will support the process. The program will involve stakeholder workshops, newsletters, a Web site, public open houses, small group and community meetings, and other methods to solicit and incorporate public input throughout the Service Level EIS process. To ensure that the full range of issues relating to the proposed action is addressed, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to TxDOT or to the FRA at the addresses provided above. Additional information can be obtained by visiting the web site at *www.txokrail.org,* or sending an email using the link on the Web site.

Issued in Washington, DC, on March 7, 2013.

Corey Hill,

Director, Passenger and Freight Programs.

[FR Doc. 2013–05732 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2011–0169]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice and request for comment on obtaining vehicle information for the general public; Correction.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to OMB for review and comments. A **Federal Register** notice (77 FR 11621) with a 60-day comment period soliciting comments on the proposed information collection for the agency's new consumer Vehicle-child restraint system (CRS) Fit program and consolidation of existing collection of vehicle safety information (OMB Control Number 2127–0629) was published on February 27, 2012. The February 2012 ''Request for comments'' notice described a new collection of information for which NHTSA intend to seek OMB approval concerning recommendations from vehicle manufacturers regarding child restraint systems (CRSs) that fit in their individual vehicles. Furthermore, NHTSA planned to combine the new information collection with an existing collection for obtaining vehicle information for consumer information purposes. The agency received comments from the public on the new and existing collection of information. However, since the agency has not published its final decision on the new consumer information program, it is not able at this time to address comments received from the public regarding the new provisions for the collection of information on vehicle-CRS matchups from vehicle manufacturers. Thus, this ''Correction'' notice now focuses on renewing the existing collection of vehicle safety information and only addresses comments received from that information collection. Comments pertaining to the new Vehicle-CRS Fit Program will be addressed at a later time in a new submission, when the agency publishes its final decision on the new program.

DATES: Comments must be received on or before April 12, 2013.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Johanna Lowrie, U.S. Department of Transportation, NHTSA, Room W43–410, 1200 New Jersey Ave SE., Washington, DC 20590. Ms. Lowrie's telephone number is (202) 366–5269. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Obtaining Vehicle Information for the General Public.

OMB Control Number: 2127–0629.

Type of Request: Information Collection Renewal.

Affected Public: Manufacturers that sell motor vehicles in the United States that have a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less.

Abstract: NHTSA's mission is to save lives, prevent injury, and reduce motor vehicle crashes. Consumer information programs are an important tool for improving vehicle safety through market forces. For over 30 years, under its New Car Assessment Program, NHTSA has been providing consumers with vehicle safety information such as frontal and side crash results, rollover propensity, and the availability of a wide array of safety features provided on each vehicle model. In addition, the agency has been using this safety feature information when responding to consumer inquiries and analyzing rulemaking petitions that requested the agency to mandate certain safety features.

NHTSA has another information collection to obtain data related to motor vehicle compliance with the agency's Federal motor vehicle safety standards. Although the consumer information collection data is distinct and unique from the compliance data, respondents to both collections are the same. Thus, the consumer information collection is closely coordinated with the compliance collection to enable responders to assemble the data more efficiently. The burden is further made easier by sending out electronic files to the respondents in which the data is entered and electronically returned to the agency.

The consumer information collected will be used on the agency's *www.safercar.gov* Web site, in the ''Purchasing with Safety in Mind: What to look for when buying a new vehicle'' and ''Buying a Safer Car for Child Passengers'' brochures, in other consumer publications, as well as for internal agency analyses and response to consumer inquiries.

Estimated Total Annual Burden: 800 hours.

ADDRESSES: Respondents may send comments, within 30 days, regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Attention NHTSA Desk Officer.

Comments are invited on whether the existing collection of information is still necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the existing information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to OMB are most effective if OMB receives them within 30 days of publication.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50

Issued on: March 7, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–05750 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Jaguar Land Rover North America Llc

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Jaguar Land Rover North America LLC's, (Jaguar) petition for an exemption of the F-Type vehicle line in accordance with 49 CFR Part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541).

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–443, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated November 16, 2012, Jaguar requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the MY 2014 Jaguar F-Type vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Jaguar provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the F-Type vehicle line. Jaguar stated that the F-Type vehicles will be equipped with a passive, transponder based, electronic engine immobilizer device as standard equipment beginning with the 2014 model year. Key components of its antitheft device will include a power train control module (PCM), instrument cluster, body control module (BCM), remote frequency receiver, Immobilizer Antenna Unit, Smart Key and door control units. Jaguar stated that its antitheft device will also include an audible and visual perimeter alarm system as standard equipment. Jaguar stated that the perimeter alarm can be armed with the Smart Key or programmed to be passively armed. The siren will sound and the vehicle's exterior lights will flash if unauthorized entry is attempted by opening the hood, doors or luggage compartment. Jaguar's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

The immobilizer device is automatically armed when the Smart Key is removed from the vehicle. Jaguar stated that the Smart key is programmed and synchronized to the vehicle through the means of an identification key code and a randomly generated secret code that are unique to each vehicle.

Jaguar stated that there are three methods to its antitheft device operation. Method one consists of automatic detection of the Smart Key via a remote frequency challenge response sequence. Specifically, when the driver approaches the vehicle and pulls the driver's door handle following authentication of the correct Smart Key, the doors will unlock. When the ignition start button is pressed, a search to find and authenticate the Smart Key commences within the vehicle interior. If successful, this information is passed by a coded data transfer to the BCM via the Remote Function Actuator. The

BCM in turn, will pass the ''valid key'' status to the instrument cluster, via a coded data transfer. The BCM sends the key valid message to the PCM which initiates a coded data transfer authorizing the engine to start. Method two consists of unlocking the vehicle with the Smart Key unlock button. As the driver approaches the vehicle, the Smart Key unlock button is pressed and the doors will unlock. Once the driver presses the ignition start button, the operation process is the same as method one. Method three involves using the emergency key blade. If the Smart Key has a discharged battery or is damaged, there is an emergency key blade that can be removed from the Smart Key and used to unlock the doors. On pressing the ignition start button, a search is commenced in order to find and authenticate the Smart Key within the vehicle interior. If successful, the Smart Key needs to be docked. Once the Smart Key is placed in the correct position, and the ignition start button is pressed again, the BCM and Smart key enter a coded data exchange via the Immobilizer Antenna Unit. The BCM in turn, passes the valid key status to the instrument cluster, via the Immobilizer Antenna Unit. The BCM then sends the key valid message to the PCM which initiates a coded data transfer. If successful, the engine will then be authorized to start the vehicle.

In addressing the specific content requirements of 543.6, Jaguar provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Jaguar conducted tests based on its own specified standards. Jaguar provided a detailed list of the tests conducted (i.e., temperature and humidity cycling, high and low temperature cycling, mechanical shock, random vibration, thermal stress/shock tests, material resistance tests, dry heat, dust and fluid ingress tests). Jaguar stated that it believes that its device is reliable and durable because it complied with specified requirements for each test. Additionally, Jaguar stated that the key recognition sequence includes in excess of a billion code combinations which include encrypted data that are secure against copying. Jaguar also stated that the coded data transfer between the BCM and the PCM modules use a unique secure identifier, a random number and a secure public algorithm. Furthermore, Jaguar stated that since the F-Type vehicle line will utilize push button vehicle ignition, it does not have a conventional mechanical key barrel. Therefore, there will be no means of forcibly bypassing the key-locking system.

Jaguar stated that the F-Type is a new vehicle line, therefore no theft data is available. Also, Jaguar stated that the immobilizer is substantially similar to the antitheft device installed on the Jaguar XK, Jaguar XJ, Land Rover LR2 and Land Rover Evoque. Jaguar stated that based on MY 2010 theft information published by NHTSA, the Jaguar Land Rover vehicles equipped with immobilizers had a combined theft rate of 0.60 per thousand vehicles, which is below NHTSA's overall theft rate of 1.17 thefts per thousand. The theft rates for the Jaguar XK, XJ and Land Rover LR2 are 0.9099, 0.0000 and 0.0000, respectively. Theft rate data is not available for the Land Rover Evoque. Jaguar believes these low theft rates demonstrate the effectiveness of the immobilizer device. Additionally, Jaguar notes a Highway Loss Data Institute news release (July 19, 2000) showing approximately a 50% reduction in theft for vehicles installed with an immobilizer device.

Based on the supporting evidence submitted by Jaguar on the device, the agency believes that the antitheft device for the F-Type vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Jaguar has provided adequate reasons for its belief that the antitheft device for the Jaguar F-Type vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Jaguar provided about its device.

For the foregoing reasons, the agency hereby grants in full Jaguar's petition for exemption for the Jaguar F-Type vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Jaguar decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Jaguar wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 7, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking .

[FR Doc. 2013–05760 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0029]

Beall Corporation; Receipt of Petition for Renewal of Temporary Exemption From FMVSS No. 224

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of a petition for renewal of a temporary exemption from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*.

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Beall Corporation, d/b/a Pioneer Truckweld has petitioned the agency for renewal of a temporary exemption from certain requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 224, *Rear Impact Protection*. This notice of receipt of an application for renewal of a temporary exemption is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than April 12, 2013.

FOR FURTHER INFORMATION CONTACT: William H. Shakely, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Room W41–318, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

ADDRESSES: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Web Site: http://www.regulations.gov*. Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

Privacy Act: Anyone is able to search the electronic form of all 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html*.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Statutory Basis for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. Chapter 301, authorizes the Secretary of Transportation to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority in this section to NHTSA.

NHTSA established 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. A vehicle manufacturer wishing to obtain an exemption from a standard must demonstrate in its application (A) that an exemption would be in the public interest and consistent with the Safety Act and (B) that the manufacturer satisfies one of the following four bases for an exemption: (i) Compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith; (ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard; (iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or (iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a ''temporary basis,'' [1] the statute also expressly provides for renewal of an exemption on reapplication. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters

[1] 49 U.S.C. 30113(b)(1).

provided in the statute. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard.

Finally, we note that under 49 CFR 555.8(e), ''If an application for renewal of a temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal.'' The subject petition for renewal has been submitted by the deadline stated in 49 CFR 555.8(e).

II. Rear Impact Protection Requirements

FMVSS No. 224, *Rear Impact Protection* requires most trailers and semitrailers weighing 10,000 pounds or more to be fitted at the rear with a rear impact (underride) guard meeting the requirements of FMVSS No. 223, *Rear Impact Guards.* The rear impact guard is attached to the rear of the trailer (within 12 inches (305 mm) of the rear extremity of the trailer or semitrailer) and acts to prevent a light vehicle from sliding under the trailer chassis in a crash.

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Beall Corporation, d/b/a Pioneer Truckweld (Beall) has submitted a petition requesting renewal of its temporary exemption from the rear impact protection requirements of FMVSS No. 224. A copy of the petition has been placed in the docket for this notice.[2] The basis for the petition is that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. Beall has requested a renewal of its exemption for a period of three years.

Beall is an Oregon corporation that manufactures trailers. The Pioneer Truckweld operation manufactures dump body trailers. In a **Federal Register** document dated August 20, 2009, Beall was granted a temporary exemption from the rear impact protection requirements of FMVSS No. 224 for dump body trailers.[3] The exemption was granted for a period from the date of publication until August 20, 2012. The petition for renewal states that the Pioneer Truckweld operation manufactured five trailers in the 12-month period prior to filing the petition, all of which were affected by the exemption.

Beall states that the denial of the requested exemption will result in substantial economic hardship. According to the statements of the petitioner, the denial of the exemption could cost the company 40 percent of its projected sales during the period covered by the exemption. Additionally, Beall asserts that if the exemption is denied, it would lose the entire $800,000 goodwill investment associated with the 2001 purchase of Pioneer Truckweld. Beall states that these effects could lead to the closure of the Pioneer Truckweld operation and the laying off of its 17 employees.

Beall also provides specific financial information for the years 2009 through 2011, along with projections with and without an exemption. This information has been placed in the docket for this notice.[4]

In explaining why it has not been currently able to meet the rear impact protection requirements, Beall points to a number a technical challenges associated with designing a compliant rear impact protection system. Namely, it states that a device designed to satisfy FMVSS No. 224 for dump body applications must also be capable of moving clear, so that the hopper of the paving machines can pass through the space initially occupied by the rear impact protection device. It argues that if the paving machine cannot position itself underneath the dump body, the asphalt will spill out as the dump body raises and unloads the asphalt. The petitioner states that it has been pursuing the design of acceptable systems in a joint project with the Mechanical Engineering Department at Montana State University, using techniques such as finite element analysis and physical testing. In addition, it claims to have designed acceptable guards for a number of non-asphalt paving applications.

Beall states it has considered several alternative means of compliance. These include plastically deforming devices and hinged and retractable devices. However, the petitioner believes that there are a number of problems with regard to these solutions. First, due to clearance issues, space for retractable devices is not readily available, and redesign of the vehicle to accommodate such devices could result in decreased stability. Second, the petitioner states that the asphalt paving surface has the effect of rendering these sorts of devices unusable over time. Finally, Beall notes that trailers could be operated with these devices in the retracted position, resulting in no safety benefits. Beall indicates that it has been unable to find a third-party manufacturer that has designed a device that would perform in a paving application.

Beall states that under a temporary exemption, it would continue to pursue a compliant rear impact protection device that would meet the current standards, including attachment and methods of maintenance to ensure proper function while in service. The petitioner states that it will continue to work with other resources available to the paving industry to develop an acceptable solution.

Beall believes that it would be in the public's interest to allow the Pioneer Truckweld operation to manufacture the equipment required to improve and expand the road building effort in the western United States while an intense effort is maintained by Pioneer Truckweld to design an acceptable underride device that will perform well in a paving operation.

IV. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete. The agency has tentatively concluded that the petition from Beall is complete. The agency has not made any judgment on the merits of the petition, and is placing a copy of the petition and supporting information in the docket.

The agency seeks comment from the public on the merits of Beall's petition for renewal of a temporary exemption from FMVSS No. 224. We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the petition in the **Federal Register**.

(Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.95 and 501.8)

Issued on: March 4, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–05780 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–59–P

[2] To view the petition, go to *http://www.regulations.gov* and enter the docket number set forth in the heading of this document.

[3] 74 FR 42142 (Aug. 20, 2009).

[4] Although the petition indicates that Beall requested confidential treatment of this information, Beall subsequently informed the agency by email that it would not be requesting such treatment. This email has been placed in the docket.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0017; Notice No. 13–02]

Hazardous Materials Packaging—Composite Cylinder Standards; Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA will conduct a public meeting to provide further clarification regarding PHMSA's intent to modify certain special permits in accordance with 49 CFR 107.121. These special permits authorize the manufacture, marking, sale and use of non-DOT specification composite cylinders. The non-DOT specification cylinders authorized by PHMSA's special permits conform to the basic requirements for fiber reinforced plastic (DOT–FRP) or fully wrapped carbon-fiber reinforced aluminum lined cylinders (DOT–CFFC) standards. PHMSA believes that these special permits should be modified to reflect the appropriate International Standards Organization (ISO) standards for composite cylinders ISO 11119 Parts –1, –2, –3 incorporated by reference into the Hazardous Materials Regulations (HMR).

DATES: The meeting will be held on Thursday, April 18, 2013, from 9 a.m. to 3 p.m. Questions, comments, or recommendations must be submitted by April 4, 2013 to be considered at the public meeting.

ADDRESSES: The meeting will be held at the DOT Headquarters, West Building, Oklahoma City Conference Room, 1200 New Jersey Avenue SE., Washington, DC 20590. The main visitor's entrance is located in the West Building, on New Jersey Avenue and M Street. Upon entering the lobby, visitors must report to the security desk. Visitors should indicate that they will be attending the Composite Cylinder Standards Public Meeting and wait to be escorted to the Conference Center.

Written Comments: PHMSA invites interested parties, whether or not they attend the public meeting to submit any relevant data or information to the docket of this proceeding (PHMSA–2013–0017) by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; US Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) which may be viewed at *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf.*

Registration: Any person wishing to participate in the public meeting should send an email to *specialpermits@dot.gov* and include their name and contact information (Organization/Address/Telephone Number) no later than the close of business on April 9, 2013. Please indicate whether you plan to attend on-site or by conference call. To expedite processing please include ''Composite Cylinder Standards; Public Meeting'' as the email subject. Failure to preregister may delay access to the building and call in information. Attendees are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Conference Call Capability/Live Meeting Information: Remote access/call-in information will be located at *http://phmsa.dot.gov/hazmat/permits-approvals/special-permits.*

FOR FURTHER INFORMATION CONTACT: Mark Toughiry, Engineering and Research Division, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, Washington, DC 20590; (202) 366–4545.

SUPPLEMENTARY INFORMATION:

I. Background

On June 4, 2012, PHMSA sent a letter proposing to modify all special permits that authorize the manufacture, marking, sale and use of DOT–FRP and DOT–CFFC cylinders to reflect the standards outlined in the appropriate ISO 11119 standards. PHMSA proposed to modify these special permits to reflect the ISO 11119 standards, which has been incorporated in to the HMR, rather than DOT–FRP and DOT–CFFC standards that are not referenced in the HMR. If a grantee cannot manufacture, mark, sale and use a cylinder identical to that authorized in the current special permit, relief would be provided based upon deviations of the ISO–11119 standards. The goal of this proposal is to update the special permits to reflect current regulations. PHMSA intends to allow continued manufacturing of DOT–FRP or DOT–CFFC cylinders under existing special permits, without affecting the service life of cylinders already manufactured or adding any additional testing requirements. However, in the future, any relief provided by a special permit will be an exemption from the ISO 11119 standards. A transitional provision will be provided for adequate adjustment to the proposed modification. Currently, an application submitted in accordance with § 107.105 requesting the manufacture, marking, sale and use of DOT–FRP and DOT–CFFC cylinders would be denied in accordance with § 107.113, and the applicant would be required to submit a new application for a special permit seeking relief from the ISO 11119 standard.

A copy of the June 4, 2012 letter can be found in the docket. PHMSA proposed to modify the following special permits: 7218 7235 7277 8023 8059 8162 8391 8718 8725 8814 8965 9634 9716 9894 10019 10147 10664 10905 10915 10945 10970 11005 11194 11382 12706 13105 13173 13381 13583 14003 14154 14266 14339 14387 14509 14562 14576 14621 14787 14932 15260.

The composite cylinder standards referenced in § 178.71 of the HMR, ISO 11119 Parts-1, -2 and -3, contain design, construction and testing requirements that are similar to the DOT–FRP, and DOT–CFFC standards. For more information, and a comparison between

ISO 11119 standards and DOT–FRP and DOT–CFFC standards, please go to *http://phmsa.dot.gov/hazmat/permits-approvals/special-permits*.

II. Public Meeting Topics

During this public meeting, PHMSA will discuss the following topics; (i) design and testing differences between DOT–FRP, DOT–CFFC and ISO 11119 standards, (ii) when cylinders authorized under the current special permits should be manufactured in accordance with or based upon ISO 11119 standards; (iii) a proposal in which these special permits are modified to provide relief from applicable provisions of ISO 11119.

Prior to this public meeting, PHMSA would like the stakeholders to define and submit to the docket the design testing and manufacturing differences between ISO 11119 standards and relevant DOT–FRP and DOT–CFFC standards and what would be affected if we modified the special permit as proposed. PHMSA will not take action on our proposed modification until the merit of the comments received through this notice and public meeting has been reviewed.

Issued in Washington, DC, on March 7, 2013.

R. Ryan Posten,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2013–05677 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0019; Notice No. 13–03]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety Advisory Notice.

SUMMARY: This notice advises the public that PHMSA has confirmed the marking, service and/or sale of certain high pressure DOT specification cylinders marked with a requalification identification number (RIN) without performing a valid hydrostatic requalification test. Kraus Fire Equipment Co. marked DOT cylinders as tested without approval from the Associate Administrator to requalify DOT cylinders and without calibrating its required systems. This advisory addresses cylinders serviced or purchased from Flint Welding Supply Co, Flint, MI from approximately June 2010 to December 2012 and marked with an ''A978'' or a partial ''A978'' or just the Month/Year, without a RIN mark in the middle.

FOR FURTHER INFORMATION CONTACT: Kraus Fire Equipment Co., G–4080 S. Dort Highway, Burton, MI Telephone 810–744–4780, Mr. Richard Battstone, Jr., Owner.

SUPPLEMENTARY INFORMATION: Approximately 496 DOT 3AA and 3AL cylinders used in carbon dioxide service were improperly marked from approximately June 2010 to December 2012. Cylinders subject to this notice were serviced or purchased from Flint Welding Supply Co, Flint, MI and were marked with an ''A978'' or a partial ''A978'' or just the Month/Year, without a RIN mark in the middle. Kraus Fire Equipment Co. requalified cylinders provided by Flint Welding Supply Co. without performing the series of safety tests and inspections required by the Hazardous Materials Regulations. These improperly marked cylinders were not properly tested and may not possess the structural integrity to safely contain their contents under pressure during normal transportation and use. Extensive property damage, serious personal injury, or death could result from a rupture of a cylinder. These cylinders should be considered unsafe and unauthorized for the filling of hazardous material unless and until they are first tested properly by an individual or company authorized by DOT to requalify DOT specification cylinders. Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged by authorized personnel. Individuals who identify a cylinder subject to this notice are advised to remove it from service and return it to Flint Welding Supply Co, Flint MI.

Issued in Washington, DC, on March 7, 2013.

R. Ryan Posten,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2013–05678 Filed 3–12–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 726X); Docket No. AB 290 (Sub-No. 303X)]

CSX Transportation, Inc.—Abandonment and Discontinuance of Service Exemption—in the City of Richmond and Henrico County, VA; Norfolk Southern Railway Company—Abandonment and Discontinuance of Service Exemption—in the City of Richmond and Henrico County, VA

On February 21, 2013, CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR) (collectively, Petitioners) jointly filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for CSXT and NSR to abandon and discontinue service over a 1.55-mile railroad line known as the James River Industrial Track, between State Road 5 and the end of the line in the City of Richmond and Henrico County, VA.[1] Petitioners explain that they have made this joint filing because they jointly own a portion of the line, they each individually own different portions of the line, and they both are authorized to operate over the entire line. The line traverses United States Postal Service Zip Code 23231 and serves the station of Richmond.[2]

Petitioners state that, based on information in CSXT's and NSR's possession, the line does not contain Federally granted rights-of-way. Any documentation in Petitioners' possession will be made available to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 11, 2013.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

[1] Petitioners state that there are no mileposts on the line.

[2] Petitioners state that the only shipper on the line, Lehigh Cement Company, LLC, has relocated its facility from the line and does not oppose the proposed abandonment and discontinuance.

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 2, 2013. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket Nos. AB 55 (Sub-No. 726X) and AB 290 (Sub-No. 303X), and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; (2) for CSXT—Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204; and (3) for NSR—Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington DC 20037. Replies to the joint petition are due on or before April 2, 2013.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR pt. 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at ''WWW.STB.DOT.GOV.''

Decided: March 7, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2013–05797 Filed 3–12–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2010–6

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2010–6, Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with Section 409A(a).

DATES: Written comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with Section 409A(a).

OMB Number: 1545–2164.

Notice Number: Notice 2010–6

Abstract: Notice 2010–6 requires a corporation to attach to its federal income tax return an information statement related to the correction of a failure of a nonqualified deferred compensation plan to comply with the written plan document requirements of Section 409A(a). The information statement must be attached to the corporation's income tax return for the corporation's taxable year in which the correction is made, and the subsequent taxable year to the extent an affected employee must include an amount in income in such subsequent year as a result of the correction. The corporation must also provide an information statement to each affected employee, and such employee must attach an information statement to the employee's federal tax return for the employee's taxable year during which the correction is made, and the subsequent taxable year but only if an amount is includible in income by the employee in such subsequent year as a result of the correction.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Reporting Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 26, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–05701 Filed 3–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning, AJCA modifications to the section 6011 regulations.

DATES: Written comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Katherine Dean, (202) 622–3186, at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Katherine.b.dean@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: AJCA modifications to the section 6011 regulations.

OMB Number: 1545–2184.

Regulation Project Number: TD 9350

Abstract: This document contains final regulations under section 6011 of the Internal Revenue Code that modify the rules relating to the disclosure of reportable transactions under section 6011. These regulations affect taxpayers participating in reportable transactions under section 6011, material advisors responsible for disclosing reportable transactions under section 6111, and material advisors responsible for keeping lists under section 6112.

Current Actions: There are no changes to the burden being made at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Section 301.6111–1(d)(2)

Estimated Number of Responses: 2000.

Estimated Average Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 166.66 hours.

Section 301.6111–1(f)

Estimated Number of Responses: 100.

Estimated Average Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 50 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 28, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–05695 Filed 3–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 966

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 966, Corporate Dissolution or Liquidation.

DATES: Written comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Corporate Dissolution or Liquidation.

OMB Number: 1545–0041.

Form Number: 966.

Abstract: Form 966 is filed by a corporation whose shareholders have agreed to liquidate the corporation. As a result of the liquidation, the shareholders receive the property of the corporation in exchange for their stock. The IRS uses Form 966 to determine if the liquidation election was properly made and if any taxes are due on the transfer of property.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 26,000.

Estimated Time per Respondent: 8 hours, 4 minutes.

Estimated Total Annual Burden Hours: 209,820.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 26, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–05697 Filed 3–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for e-Services Registration TIN Matching—Application and Screens for TIN Matching Interactive

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning e-Services registration TIN matching—application and screens for TIN matching interactive.

DATES: Written comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Katherine Dean, (202) 622–3186, at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: e-Services Registration TIN Matching—Application and Screens for TIN Matching Interactive.

OMB Number: 1545–1823.

Abstract: E-services is a system which will permit the Internal Revenue Service to electronically communicate with third party users to support electronic filing and resolve tax administration issues for practitioners, payers, states and Department of Education Contractors. Registration is required to authenticate users that plan to access e-Services products. This system is a necessary outgrowth of advanced information and communication technologies. TIN Matching is one of the products available through e-Services offered via the internet and accessible through the irs.gov Web site. TIN Matching allows a payer, or their authorized agent, who is required to file information returns for income subject to backup withholding to match TIN/Name combinations through interactive and bulk sessions. It is necessary for payers to apply online to use TIN Matching, and the information requested in the application process is used to validate them systemically as payers of the correct types of income.

Current Actions: This Notice is corrected to reflect the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations and not-for-profit institutions.

Registration

Estimated Number of Responses: 1,560,000.

Estimated Average Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 520,000.

TIN Matching Application

Estimated Number of Responses: 18,825,000.

Estimated Average Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 3,670,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–05694 Filed 3–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2010–9

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2010–9.

DATES: Written comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2010–9.

OMB Number: 1545–2080.

Revenue Procedure Number: 2010–9.

Abstract: The respondents are nonprofit organizations seeking recognition of exemption under certain parts of Sec. 501(c) of the Internal Revenue Code. These organizations must submit a letter of application. We need this information to determine whether the organization meets the legal requirements for tax-exempt status. In addition, the information will be used to help the Service delete certain information from the text of an adverse determination letter or ruling before it is made available for public inspection, as required under Sec. 6110.

Current Actions: There are no changes being made to this revenue procedure.

Type of Review: Extension of a previously approved collection.

Affected Public: Not-For-Profit Institutions.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 200.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 26, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–05699 Filed 3–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in New York, NY.

DATES: The meeting will be held April 3, 2013.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on April 3, 2013 at 110 West 44th Street, New York, NY 10036 at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Ruth M. Vriend, C:AP:SO:ART, 1111 Constitution Ave. NW., Washington, DC 20024. Telephone (202) 435–5739 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on April 3, 2013, at 110 West 44th Street, New York, NY 10036.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Christopher Wagner,

Chief, Appeals.

[FR Doc. 2013–05693 Filed 3–12–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 78 Wednesday,

No. 49 March 13, 2013

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 213 and 238

Vehicle/Track Interaction Safety Standards; High-Speed and High Cant Deficiency Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 213 and 238

[Docket No. FRA–2009–0036, Notice No. 2]

RIN 2130–AC09

Vehicle/Track Interaction Safety Standards; High-Speed and High Cant Deficiency Operations

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

ACTION: Final rule.

SUMMARY: FRA is amending the Track Safety Standards and Passenger Equipment Safety Standards to promote the safe interaction of rail vehicles with the track over which they operate under a variety of conditions at speeds up to 220 m.p.h. The final rule revises standards for track geometry and safety limits for vehicle response to track conditions, enhances vehicle/track qualification procedures, and adds flexibility for permitting high cant deficiency train operations through curves at conventional speeds. The rule accounts for a range of vehicle types that are currently in operation, as well as vehicle types that may likely be used in future high-speed or high cant deficiency rail operations, or both. The rule is based on the results of simulation studies designed to identify track geometry irregularities associated with unsafe wheel/rail forces and accelerations, thorough reviews of vehicle qualification and revenue service test data, and consideration of international practices.

DATES: This final rule is effective July 11, 2013. The incorporation by reference of a certain publication listed in the rule is approved by the Director of the **Federal Register** as of July 11, 2013. Petitions for reconsideration must be received on or before May 13, 2013. Comments in response to petitions for reconsideration must be received on or before June 26, 2013.

ADDRESSES: *Petitions for reconsideration and comments on petitions for reconsideration:* Any petitions for reconsideration or comments on petitions for reconsideration related to Docket No. FRA–2009–0036, Notice No. 2, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *www.regulations.gov.* Follow the Web site's online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all petitions and comments received will be posted without change to *www.regulations.gov,* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted petitions, comments, or materials.

Docket: For access to the docket to read background documents, petitions for reconsideration, or comments received, go to *www.regulations.gov* anytime or visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John J. Mardente, Engineer, Office of Railroad Safety, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–1335); Ken Rusk, Staff Director, Track Division, Office of Railroad Safety, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6236); Ali Tajaddini, Program Manager for Vehicle/Track Interaction, Office of Railroad Policy and Development, Mail Stop 20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6438); or Daniel L. Alpert, Supervisory Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6026).

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  I. Privacy Act

I. Executive Summary

Having considered the public comments in response to FRA's May 10, 2010, proposed rule on vehicle/track interaction safety, *see* 75 FR 25928, FRA issues this final rule amending the Track Safety Standards, 49 CFR part 213, and the Passenger Equipment Safety Standards, 49 CFR part 238, applicable to high-speed and high cant deficiency train operations. (As explained more fully in the preamble, below, train operations at cant deficiency involve traveling through curves faster than the balance speed; the higher the train speed is above the balance speed, the higher the cant deficiency.) Since FRA's high-speed track safety standards and passenger equipment safety standards were issued in the late 1990s, FRA and interested industry members have identified various issues for possible future rulemaking. Some of these issues resulted from the gathering of operational experience in applying the safety standards to Amtrak's high-speed, Acela Express (Acela) trainsets, as well as to higher-speed commuter railroad operations. Other issues arose from research conducted, allowing FRA to gather new information with which to evaluate the safety of high-speed and high cant deficiency rail operations.

FRA has addressed these issues with the assistance of the Railroad Safety Advisory Committee (RSAC), which unanimously recommended the requirements contained in this final rule.

Among the final rule's main accomplishments, the rule:

- Revises performance standards and specifications for track geometry for the higher-speed track classes, track Classes 6 through 9 (speeds greater than 80 miles per hour (m.p.h.) for freight and 90 m.p.h. for passenger operations). FRA has reviewed the performance standards in light of advanced simulations that were developed to support the rulemaking effort, as discussed in Section IV, below, and is refining those standards to focus on identified safety concerns and remove any unnecessary costs.
- Adds flexibility through procedures for safely permitting high cant deficiency operations on the lower-speed track classes, track Classes 1 through 5, without the need for obtaining a waiver. In order to take advantage of high cant deficiency operations and the resultant savings in travel time, the equipment must be qualified and the track must be maintained to more stringent standards to permit the higher speeds through curves.
- Institutes more cost-effective equipment qualification and in-service monitoring requirements. Railroads can discontinue annual use of instrumented wheelsets for in-service validation as a general requirement and avoid some tests that have not provided useful data. Further, the final rule makes it easier to qualify vehicles on additional segments of track once they are qualified on any track, extending territories in which qualified equipment may operate.
- Clarifies that individuals qualified to inspect track need only understand the portions of the regulation relevant to the inspections they conduct and the work they perform, given, in particular, the provisions added for high cant deficiency operations in lower-speed track classes.

In analyzing the economic impacts of the final rule, FRA does not find that any existing operation will be adversely affected by these changes, nor does FRA find that the changes will induce any net costs.

FRA expects three types of benefits: Benefits related to equipment procurement for passenger trains at speeds exceeding 90 m.p.h., benefits from operations at high cant deficiency for passenger trains at speeds up to 90 m.p.h, and benefits from streamlined testing requirements. Under the rules existing before this final rule, a railroad could insist that a carbuilder provide trainsets that could meet acceleration requirements on track at the maximum allowable deviations. FRA is unaware of any such trainsets that are available that would have complied with the former rule under all permitted conditions and also meet other requirements for service in the United States. This final rule makes it more likely that railroads will specify equipment that is currently produced, and thus could reduce the costs of procurements, although Amtrak disagrees in its comments (and FRA believes that, even without procurement benefits, the costs of the rule are still justified by the benefits). Operations at high cant deficiency allow trains to operate more rapidly around curves. This can dramatically reduce the time required for any given trip. Streamlined testing requirements make it much easier to qualify a trainset on additional track once it has been qualified on any track, and provide more flexibility for monitoring trainset performance in service.

Nothing in the rule will increase the overall costs of procuring equipment or of testing that equipment to validate compliance with the rule. In fact, the rule will reduce those costs.

Although the provisions for high cant deficiency operations on all track classes are permissive in nature and create no additional net costs, railroads that avail themselves of these provisions will incur some costs. The first will be the one-time cost of programming the software of automated track inspection vehicles to include the new standards required by the rule, and the second will be the cost of maintaining the track in curves to tighter geometric standards. FRA conservatively estimates that it will cost $292,000 as a one-time expense to update track inspection software to reflect the changes in this rule. However, FRA is not certain whether overall maintenance costs will be higher or lower with high cant deficiency operations, as trains otherwise would have more frequently slowed down from the line speed before entering curves and then accelerated back to the line speed after exiting the curves, adding wear and tear to both equipment and track. In any case, the difference in maintenance costs is not included as a factor in the analysis.

The rule creates net benefits and will facilitate the expansion of passenger rail service.

II. Statutory Background

A. Track Safety Standards

The first Federal Track Safety Standards were published on October 20, 1971, following the enactment of the Federal Railroad Safety Act of 1970, Public Law 91–458, 84 Stat. 971 (October 16, 1970), in which Congress granted to FRA comprehensive authority over ''all areas of railroad safety.'' *See* 36 FR 20336. FRA envisioned the new Standards to be an evolving set of safety requirements subject to continuous revision allowing the regulations to keep pace with industry innovations and agency research and development. The most comprehensive revision of the Standards resulted from the Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (Sept. 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (November 2, 1994). The amended statute is codified at 49 U.S.C. 20142 and required the Secretary of Transportation (Secretary) to review and then revise the Track Safety Standards, which are contained in 49 CFR part 213. The Secretary has delegated such statutory responsibilities to the Administrator of FRA (see 49 CFR 1.89), which as discussed below, carried out the review and the rulemaking proceedings.

B. Passenger Equipment Safety Standards

In September 1994, the Secretary 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 develop safety standards for rail passenger equipment over a 5-year period. In November 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994. Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of prescribing and amending these regulations, as well as issuing orders pursuant to them. Section 215 of this Act is codified at 49 U.S.C. 20133.

III. Proceedings to Date

A. Proceedings To Carry Out the 1992/1994 Track Safety Standards Rulemaking Mandates

To help fulfill the statutory mandates described in Section II.A, FRA decided that the proceeding to revise part 213 should advance under RSAC, which was established on March 11, 1996. (A fuller discussion of RSAC is provided below.) In turn, RSAC formed the Track Working Group, comprised of approximately 30 representatives from railroads, rail labor organizations, trade associations, State government, track equipment manufacturers, and FRA, to develop and draft a proposed rule for revising part 213. The Track Working Group identified issues for discussion from several sources, in addition to the statutory mandates issued by Congress in 1992 and in 1994. Ultimately, the Track Working Group recommended a proposed rule to the full RSAC body, which in turn formally recommended to the Administrator of FRA that FRA issue the proposed rule as it was drafted.

On July 3, 1997, FRA published an NPRM that included substantially the same rule text and preamble as that developed by the Track Working Group. The NPRM generated comment, and following consideration of the comments received, FRA published a final rule in the **Federal Register** on June 22, 1998, *see* 63 FR 33992, which, effective September 21, 1998, revised the Track Safety Standards in their entirety.

To address the modern railroad operating environment, the final rule included standards specifically applicable to high-speed train operations in a new subpart G. Prior to the 1998 final rule, the Track Safety Standards had addressed six classes of track, Classes 1 through 6, that permitted passenger and freight trains to travel at speeds up to 110 m.p.h.; passenger trains had been allowed to operate at speeds over 110 m.p.h. under conditional waiver granted by FRA. FRA revised the requirements for Class 6 track, included them in new subpart G, and also added in it three new classes of track, track Classes 7 through 9, designating standards for track over which trains may travel at speeds up to 200 m.p.h. The new subpart G was intended to function as a set of ''stand alone'' regulations governing any track identified as belonging to one of these high-speed track classes.

B. Proceedings To Carry Out the 1994 Passenger Equipment Safety Standards Rulemaking Mandate

FRA formed the Passenger Equipment Safety Standards Working Group to provide FRA with advice in developing the regulations mandated by Congress. On June 17, 1996, FRA published an advance notice of proposed rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment. *See* 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 passenger safety topics. Following consideration of comments received on the ANPRM and advice from FRA's Passenger Equipment Safety Standards Working Group, FRA published an NPRM on September 23, 1997, to establish comprehensive safety standards for railroad passenger equipment. *See* 62 FR 49728. In addition to requesting written comment on the NPRM, FRA also solicited oral comment at a public hearing held on November 21, 1997. FRA considered the comments received on the NPRM and prepared a final rule, which was published on May 12, 1999. *See* 64 FR 25540.

After publication of the final rule, interested parties filed petitions seeking FRA's reconsideration of certain requirements contained in the rule. These petitions generally related to the following subject areas: Structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. On July 3, 2000, FRA issued a response to the petitions for reconsideration relating to the inspection, testing, and maintenance of passenger equipment, the movement of defective passenger equipment, and other miscellaneous provisions related to mechanical issues contained in the final rule. *See* 65 FR 41284. On April 23, 2002, FRA responded to all remaining issues raised in the petitions for reconsideration, with the exception of those relating to fire safety. *See* 67 FR 19970. Finally, on June 25, 2002, FRA completed its response to the petitions for reconsideration by publishing a response to those petitions concerning the fire safety portion of the rule. *See* 67 FR 42892. (For more detailed information on the petitions for reconsideration and FRA's response to them, please see these three rulemaking documents.) The product of this rulemaking was codified primarily at 49 CFR part 238 and secondarily at 49 CFR parts 216, 223, 229, 231, and 232.

C. Identification of Key Issues for Future Rulemaking

While FRA had completed these rulemakings, FRA and interested industry members began identifying various issues for possible future rulemaking. Some of these issues resulted from the gathering of operational experience in applying the new safety standards to Amtrak's Acela trainsets, as well as to higher-speed commuter railroad operations. These included concerns raised by railroads and rail equipment manufacturers as to the application of the new safety standards and the consistency between the requirements contained in part 213 and those in part 238. Other issues arose from research conducted, allowing FRA to gather new information with which to evaluate the safety of high-speed and high cant deficiency rail operations. FRA decided to address these issues with the assistance of RSAC.

FRA notes that train operation at cant deficiency involves traveling through a curve faster than the balance speed. Balance speed for any given curve is the speed at which the lateral component of centrifugal force will be exactly compensated (or balanced) by the corresponding component of the gravitational force. When operating above the balance speed, there is a net lateral force to the outside of the curve. Cant deficiency is measured in inches and is the amount of superelevation that would need to be added to the existing track to balance this centrifugal force with this gravitational force to realize no net lateral force measured in the plane of the rails. For every curve, there is a balance speed at which the cant deficiency is zero based on the actual superelevation built into the track. The higher the train speed is above the balance speed, the higher the cant deficiency.

D. RSAC Overview

As mentioned above, in March 1996, FRA established RSAC as a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

- American Association of Private Railroad Car Owners (AAPRCO);
- American Association of State Highway and Transportation Officials (AASHTO);

- American Chemistry Council;
- American Petroleum Institute;
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association;
- Association of American Railroads (AAR);
- Association of Railway Museums;
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employes Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- Federal Transit Administration (FTA); *
- Fertilizer Institute;
- High Speed Ground Transportation Association;
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers;
- Labor Council for Latin American Advancement; *
- League of Railway Industry Women; *
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women; *
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association;
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB); *
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte; *
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada; *
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA); * and
- United Transportation Union (UTU).

* Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. When a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. However, to the maximum extent practicable, FRA utilizes RSAC to provide consensus recommendations with respect to both proposed and final agency action. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action.

E. Establishment of the Passenger Safety Working Group

On May 20, 2003, FRA presented, and RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions that could be useful in advancing the safety of rail passenger service. The RSAC established the Passenger Safety Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, include the following:

- AAR, including members from BNSF Railway Company (BNSF), CSX Transportation, Inc. (CSXT), and Union Pacific Railroad Company;
- AAPRCO;
- AASHTO;
- Amtrak;
- APTA, including members from Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology, Inc. (Interfleet, formerly LDK Engineering, Inc.), Long Island Rail Road (LIRR), Maryland Transit Administration (MTA), Metro-North Commuter Railroad Company, Northeast Illinois Regional Commuter Railroad Corporation, Southern California Regional Rail Authority, and Southeastern Pennsylvania Transportation Authority (SEPTA);
- ASLRRA;
- BLET;
- BRS;
- FTA;
- NARP;
- RSI;
- SMWIA;
- STA;
- TCIU/BRC;
- TSA;
- TWU; and
- UTU.

Staff from DOT's John A. Volpe National Transportation Systems Center (Volpe Center) attended all of the meetings and contributed to the technical discussions. Staff from the NTSB also participated in the Working Group's meetings. The Working Group has held 14 meetings on the following dates and in the following locations:

- September 9–10, 2003, in Washington, DC;
- November 6, 2003, in Philadelphia, PA;
- May 11, 2004, in Schaumburg, IL;
- October 26–27, 2004, in Linthicum/Baltimore, MD;
- March 9–10, 2005, in Ft. Lauderdale, FL;
- September 7, 2005, in Chicago, IL;
- March 21–22, 2006, in Ft. Lauderdale, FL;
- September 12–13, 2006, in Orlando, FL;
- April 17–18, 2007, in Orlando, FL;
- December 11, 2007, in Ft. Lauderdale, FL;
- June 18, 2008, in Baltimore, MD;
- November 13, 2008, in Washington, DC;
- June 8, 2009, in Washington, DC; and
- September 16, 2010, in Chicago, IL.

F. Establishment of the Task Force

Due to the variety of issues involved, at its November 2003 meeting the Working Group established four task forces—smaller groups to develop recommendations on specific issues within each group's particular area of expertise. Members of the task forces include various representatives from the

respective organizations that are part of the larger Working Group. One of these task forces was assigned to identify and develop issues and recommendations specifically related to the inspection, testing, and operation of passenger equipment as well as concerns related to the attachment of safety appliances on passenger equipment. An NPRM on these topics was published on December 8, 2005 (*see* 70 FR 73069), and a final rule was published on October 19, 2006 (*see* 71 FR 61835). Another of these task forces was assigned to develop recommendations related to window glazing integrity, structural crashworthiness, and the protection of occupants during accidents and incidents. The work of this task force led to the publication of an NPRM focused on enhancing the front end strength of cab cars and multiple-unit (MU) locomotives on August 1, 2007 (*see* 72 FR 42016), and the publication of a final rule on January 8, 2010 (*see* 75 FR 1180). Another task force, the Emergency Preparedness Task Force, was established to identify issues and develop recommendations related to emergency systems, procedures, and equipment. An NPRM on these topics was published on August 24, 2006 (*see* 71 FR 50276), and a final rule was published on February 1, 2008 (*see* 73 FR 6370).

The fourth task force, the Track/Vehicle Interaction Task Force (also identified as the Vehicle/Track Interaction Task Force, or Task Force), was established to identify issues and develop recommendations related to the safety of vehicle/track interactions. Initially, the Task Force was charged with considering a number of issues, including vehicle-centered issues involving wheel flange angle, tread conicity, and truck equalization; the necessity for instrumented wheelset tests for operations at speeds from 90 to 125 m.p.h.; consolidation of vehicle trackworthiness criteria in parts 213 and 238; and revisions of the track geometry standards. The Task Force was given the responsibility of addressing other vehicle/track interaction safety issues and to recommend any research necessary to facilitate their resolution. Members of the Task Force, in addition to FRA, include the following:

- AAR;
- AASHTO;
- Amtrak;
- APTA, including members from Bombardier, Interfleet, LIRR, LTK Engineering Services, Port Authority Trans-Hudson, and STV Inc.;
- BMWED; and
- BRS.

Staff from the Volpe Center attended all of the meetings and contributed to the technical discussions through their comments and presentations. In addition, staff from ENSCO, Inc., attended all of the meetings and contributed to the technical discussions, as a contractor to FRA. Both the Volpe Center and ENSCO, Inc., have supported FRA throughout this rulemaking.

The Task Force has held 32 meetings on the following dates and in the following locations:

- April 20–21, 2004, in Washington, DC;
- May 24, 2004, in Springfield, VA (technical subgroup only);
- June 24–25, 2004, in Washington, DC;
- July 6, 2004, in Washington, DC (technical subgroup only);
- July 22, 2004, in Washington, DC (technical subgroup only);
- August 24–25, 2004, in Washington, DC;
- October 12–14, 2004, in Washington, DC;
- December 9, 2004, in Washington, DC;
- February 10, 2005, in Washington, DC;
- April 7, 2005, in Washington, DC;
- August 24, 2005, in Washington, DC;
- November 3–4, 2005, in Washington, DC;
- January 12–13, 2006, in Washington, DC;
- March 7–8, 2006, in Washington, DC;
- April 25, 2006, in Washington, DC;
- May 23, 2006, in Washington, DC;
- July 25–26, 2006, in Cambridge, MA;
- September 7–8, 2006, in Washington, DC;
- November 14–15, 2006, in Washington, DC;
- January 24–25, 2007, in Washington, DC;
- March 29–30, 2007, in Cambridge, MA;
- April 26, 2007, in Springfield, VA;
- May 17–18, 2007, in Cambridge, MA;
- June 25–26, 2007, in Arlington, VA;
- August 8–9, 2007, in Cambridge, MA;
- October 9–11, 2007 in Washington, DC;
- November 19–20, 2007, in Washington, DC;
- February 27–28, 2008, in Cambridge, MA;
- August 5–6, 2010, in Rockville, MD;
- August 23, 2010, in Washington, DC (via teleconference);
- September 7, 2010, in Washington, DC (via teleconference); and
- June 29, 2011, in Washington, DC (via teleconference).

This list includes meetings of a technical subgroup comprised of representatives of the larger Task Force. These subgroup meetings were often convened the day before the larger Task Force meetings to focus on more advanced, technical issues. The results of these meetings were then presented at the larger Task Force meetings and, in turn, included in the minutes of those Task Force meetings. Minutes of each of these meetings have been made part of the public docket in this proceeding and are available for inspection.

G. Development of the NPRM

The NPRM was developed to address a number of the concerns raised and issues discussed during Task Force and Working Group meetings. The Task Force recognized that the high-speed track safety standards are based on the principle that, to ensure safety, the interaction of the vehicles and the tracks over which they operate must be considered within a systems approach that provides for specific limits for vehicle response to track perturbation(s). From the outset, the Task Force strove to develop revisions that would: Serve as practical standards with sound physical and mathematical bases; account for a range of vehicle types that are currently used and may likely be used on future high-speed or high cant deficiency rail operations, or both; and not present an undue burden on railroads. The Task Force first identified key issues requiring attention based on experience applying the Track Safety Standards and Passenger Equipment Safety Standards, and defined the following work efforts:

- Revise—
  - Qualification requirements for high-speed and high cant deficiency operations;
  - Acceleration and wheel/rail force safety limits;
  - Inspection, monitoring, and maintenance requirements; and
  - Track geometry limits for high-speed operations.
- Establish—
  - Necessary safety limits for wheel profile and truck equalization;
  - Consistent requirements for high cant deficiency operations covering all track classes; and
  - Additional track geometry requirements for cant deficiencies greater than 5 inches.
- Resolve and reconcile inconsistencies between the Track Safety Standards and Passenger Equipment Safety Standards, and

between the lower- and higher-speed Track Safety Standards.

Through the close examination of these issues, the Task Force developed proposals intended to result in improved public safety while reducing the burden on the railroad industry where possible. The proposals were arrived at through the results of computer simulations of vehicle/track dynamics, consideration of international practices, and thorough reviews of qualification and revenue service test data.

Nonetheless, in the NPRM published in the **Federal Register** on May 10, 2010, *see* 75 FR 25928, FRA made clear that the Task Force did not seek to revise comprehensively the high-speed Track Safety Standards in subpart G of part 213, and the NPRM did not propose to do so. For example, there was no consensus within the Task Force to consider revisions to the requirements for crossties, as members of the Task Force believed it was outside of their assigned tasks. Nor was there any real discussion about revisions to the requirements for ballast or other sections in subpart G that currently do not distinguish requirements by class of track. (See § 213.307 in the Section-by-Section Analysis, below, for further discussion on this point.) FRA therefore made clear that by not proposing revisions to these sections in the NPRM, FRA did not mean to imply that these other sections may not be subject to revision in the future, such as through a separate RSAC effort. Further, FRA invited comment on the need and rationale for changes to other sections of subpart G not specifically proposed to be revised through the NPRM, noting that based upon the comments received and their significance to the changes specifically proposed, FRA may consider whether revisions to additional requirements in subpart G are necessary in this final rule.

H. Development of the Final Rule

FRA notified the public of its options to submit written comments on the NPRM and to request a public, oral hearing on the NPRM as well. No request for a public hearing was received. However, a number of interested parties did submit written comments to the docket in this proceeding, and FRA considered all of these comments in preparing the final rule. Specifically, written comments were received from AAR, Amtrak, Bombardier, the European Union (EU), Florida Department of Transportation (FDOT), New Jersey Transit Corporation (NJ Transit), North Carolina Department of Transportation (NCDOT), SEPTA, Société Nationale des Chemins de fer Français (French National Railway Company, shortened as SNCF), and a private citizen. As discussed below, FRA sought clarification from SNCF on SNCF's initial written comments to the docket, and SNCF supplemented its comments in response to FRA's request. FRA's request and SNCF's response have been made part of the public docket in this proceeding.

FRA convened the Task Force to discuss the comments received on the NPRM and to help achieve consensus on recommendations concerning their incorporation into this final rule. After four meetings and subsequent electronic communications, the Task Force reached consensus on recommendations for the text of the final rule. The recommendations were accepted by the Working Group and unanimously approved by the full RSAC as the Committee's recommendations to the FRA Administrator. Finding that the recommendations help fulfill the agency's regulatory goals, are soundly supported, and in accordance with policy and legal requirements, FRA has adopted these recommendations in this final rule.

FRA notes that throughout the preamble discussion of this final rule, FRA refers to comments, views, suggestions, or recommendations made by members of the Task Force, Working Group, or full RSAC, as they are identified or contained in meeting minutes or other materials in the public docket. FRA does so to show the origin of certain issues and the nature of discussions concerning those issues at the Task Force, Working Group, and full RSAC level. FRA believes this serves to illuminate factors it has weighed in making its regulatory decisions, as well as the rationale for those decisions.

IV. Technical Background

A. Lessons Learned and Operational Experience

Since the issuance of both the high-speed Track Safety Standards in 1998 and the Passenger Equipment Safety Standards in 1999, experience has been gained in qualifying a number of vehicles for high-speed and high cant deficiency operations and in monitoring subsequent performance in revenue service operation. These vehicles include Amtrak's Acela trainset; MTA's MARC–III multi-level passenger car; and NJ Transit's ALP–46 locomotive, Comet V car, PL–42AC locomotive, and multi-level passenger car. Considerable data was gathered by testing these vehicles at speed over their intended service routes using instrumented wheelsets to measure forces directly between the wheel and rail and using accelerometers to record vehicle motions. During the course of these qualification tests, some uncertainties, inconsistencies, and potentially restrictive values were identified in the interpretation and application of the vehicle/track interaction (VTI) safety limits then specified in § 213.333 and § 213.345 for excessive vehicle motions based on measured accelerations and in the requirements of § 213.57 and § 213.329 for high cant deficiency operation. The information and experience in applying these requirements helped lay the foundation for a number of the changes made in this rulemaking, examples of which are provided below.

Differentiate Between Sustained Oscillatory and Transient Carbody Acceleration Events

During route testing of the MARC–III multi-level car at speeds up to 125 m.p.h. and at curving speeds producing up to 5 inches of cant deficiency, several short-duration, peak-to-peak carbody lateral accelerations were recorded that exceeded regulatory thresholds but did not represent unsafe guidance forces simultaneously measured at the wheel-to-rail interface. However, repeated (sustained) carbody lateral oscillatory accelerations and significant motions were measured on occasion at higher speeds in curves even though peak-to-peak amplitudes did not exceed the thresholds. A truck component issue was identified as a cause of the excessive accelerations and thereafter corrected.

To recognize and account for wider variations in vehicle design, this final rule divides the VTI acceleration limits into separate limits for passenger cars from those for other vehicles, such as conventional locomotives. In addition, new limits for sustained, carbody oscillatory accelerations have been added to differentiate between single (transient) events and repeated (sustained) oscillations. As a result, the carbody transient acceleration limits for single events, previously set conservatively to control for both single and repeated oscillations, are now more specific and, as appropriate, relaxed. FRA believes that this added specificity in the rule will reduce or eliminate altogether the need for railroads to provide clarification or perform additional analysis, or both, to distinguish between transient and sustained oscillations following a qualification test run. Based on the small energy content associated with high-frequency acceleration events of

the carbody, transient acceleration peaks lasting less than 50 milliseconds are excluded from the carbody acceleration limits. Other clarifying changes include the addition of minimum requirements for sampling and filtering of the acceleration data. These changes followed considerable research into the performance of existing vehicles during qualification testing and revenue operation. Overall, it was found that the carbody oscillatory acceleration limits need not be as stringent to protect against events leading to vehicle or passenger safety issues.

Establish Consistent Requirements for High Cant Deficiency Operations for All Track Classes

Several issues related to operation at higher cant deficiencies (higher speeds in curves) have also been addressed, based particularly on route testing of the Acela trainsets on Amtrak's Northeast Corridor. In sharper curves, for which cant deficiency was high but vehicle speeds were reflective of a lower track class, it was found that stricter track geometry limits were necessary, for the same track class, in order to provide an equivalent margin of safety for operations at higher cant deficiency. These stricter limits have been adopted in this final rule. Second, although the Track Safety Standards have prescribed limits on geometry variations existing in isolation, it was recognized that a combination of track alinement (also spelled ''alignment'' and literally meant to indicate ''a line'') and surface variations, none of which individually amounts to a deviation from the Standards, may nonetheless result in undesirable response as defined by the VTI limits. This finding was significant because trains operating at high cant deficiency increase the lateral force exerted on track during curving and, in many cases, may correspondingly reduce the margin of safety associated with vehicle response to combined track variations. Sections 213.65 and 213.332 have been added to the rule, as a result. Qualification of Amtrak's conventional passenger equipment to operate at cant deficiencies up to 5 inches also highlighted the need to ensure compatibility between the requirements for low- (§ 213.57) and high-speed (§ 213.329) cant deficiency operations; these requirements have been modified, accordingly.

Streamline Testing Requirements for Similar Vehicles

This final rule provides that vehicles with minor variations in their physical properties (such as suspension, mass, interior arrangements, or dimensions) that do not result in significant changes to their dynamic performance (i.e., are dynamically similar) be considered of the same vehicle type for vehicle qualification purposes. Provided that this similarity can be established to FRA's satisfaction, these vehicles are not required to repeat full qualification testing of the vehicle type to which they belong, thereby saving the costs associated with full testing. In other cases, however, the variations between car parameters may warrant partial or full dynamic testing. For example, the approval process for NJ Transit's Comet V car to operate at speeds up to 100 m.p.h. exemplified the need for clarification of whether vehicles similar (but not identical) to vehicles that have undergone full qualification testing should be subjected to full qualification testing themselves. NJ Transit had sought relief from the instrumented wheelset testing required in § 213.345 by stating that the Comet V car was similar to the Comet IV car. The Comet V car was represented to FRA to have truck and suspension components nearly identical to the Comet IV car already in service and operating at 100-m.p.h. speeds for many years. However, examination by FRA revealed enough differences between the vehicles to at least warrant dynamic testing using accelerometers on representative routes. Results of the testing showed distinct behaviors between the cars and provided additional data that was necessary for qualifying the Comet V.

Refine Criteria for Detecting Truck Hunting

During route testing of Acela trainsets, high-frequency lateral acceleration oscillations of the coach truck frame were detected by the test instrumentation in a mild curve at high speed. However, the onboard sensors, installed per specification on every truck, did not respond to these events. Based on these experiences, the truck lateral acceleration safety limit, used for the detection of truck hunting, has been tightened from 0.4g to 0.3g and provides that the 0.3g value must be exceeded for more than 2 seconds for there to be an exceedance. Analyses conducted by FRA have shown that this change will better help to identify the occurrences of excessive truck hunting, while excluding high-frequency, low-amplitude oscillations that do not require immediate attention. In addition, to improve the process for analyzing data while vehicles are negotiating spiral track segments, the limit now requires that the RMSt (root mean squared with linear trend removed) value be used rather than the RMSm (root mean squared with mean removed) value.

Finally, placement of the truck frame lateral accelerometer to detect truck hunting has been more rigorously specified to be as near an axle as is practicable. Analyses conducted by FRA have shown that when hunting motion (which is typically a combination of truck lateral motion and yaw) has a large truck yaw component, hunting is best detected by placing an accelerometer on the truck frame located above an axle. FRA has found that an accelerometer placed in the middle of the truck frame will not always provide early detection of truck hunting when yaw motion of the truck is large.

Revise Periodic Monitoring Requirements for Class 8 and 9 Track

Based on collected data, and so that the required inspection frequency better reflects experienced degradation rates, the periodic vehicle/track interaction monitoring frequency contained in § 213.333 for operations at track Class 8 and 9 speeds has been reduced from once per day to four times per week for carbody accelerations, and twice within 60 days for truck accelerations. In addition, a clause has been added to allow the track owner or railroad operating the vehicle type subject to the monitoring to petition FRA, after a specified amount of time or mileage, to eliminate the truck accelerometer monitoring requirement. Data gathered has shown that these monitoring requirements could be adjusted without materially diminishing operational safety. In this regard, FRA notes that safety is also provided pursuant to § 238.427 in that truck acceleration continues to be constantly monitored on each Tier II vehicle under the Passenger Equipment Safety Standards in order to determine if hunting oscillations of the vehicle are occurring during revenue operation.

B. Research and Computer Modeling

As a result of advancements made over the last few decades, computer models of rail vehicles interacting with track have become practical and reliable tools for predicting the behavior and safety of these vehicles under a variety of conditions. These models can serve as reliable substitutes for performing actual, on-track testing, which otherwise may be more difficult—and likely more costly—to perform than to model.

Models for such behavior typically represent the vehicle body, wheelsets, truck frames, and other major vehicle components as rigid bodies connected

with elastic and damping elements and include detailed representation of the non-linear wheel/rail contact mechanics (i.e., non-linear frictional contact forces between the wheels and rails modeled as functions of the relative velocities between the wheel and rail contacts, i.e., creepages). The primary dynamic input to these models is track irregularities, which can be created analytically (such as versines, cusps, etc.) or based on actual measurements.

There are a number of industry codes available with generally accepted approaches for solving the equations of motion describing the dynamic behavior of rail vehicles. These models require accurate knowledge of vehicle parameters, including the inertia properties of each of the bodies as well as the characteristics of the main suspension components and connections. To obtain reliable predictions, the models must also consider the effects of suspension non-linearities within the vehicles and in the wheel/rail contact mechanics, as well as incorporate detailed characterization of the track as input, including the range of parameters and non-linearities encountered in service.

In order to develop revisions to the track geometry limits in the Track Safety Standards, several computer models of rail vehicles have been used to assess the response of vehicle designs to a wide range of track conditions corresponding to limiting conditions allowed for each class of track. Simulation studies have been performed using computer models of Amtrak's AEM–7 locomotive, Acela power car, Acela coach car, and Amfleet coach equipment. In the time since the 1998 revisions to the track geometry limits, which were largely based on models of hypothetical, high-speed vehicles, models of the subsequently-introduced Acela power car and coach car have been developed. In the case of the Acela power car, the model has proven capable of reproducing a wide range of vehicle responses observed during acceptance testing, including examples of potential safety concerns.

For purposes of this rulemaking, an extensive matrix of simulation studies involving all four vehicle types was used to determine the amplitude of track geometry alinement anomalies, surface anomalies, and combined surface and alinement anomalies that result in undesirable response. These simulations were performed using two coefficients of friction (0.1 and 0.5), two analytical anomaly shapes (bump and ramp), and combinations of speed, curvature, and superelevation to cover a range of cant deficiency. The results provided the basis for establishing the revisions to the geometry limits adopted in this final rule. For illustration purposes, two examples are provided of results from simulation studies that were performed for determining safe amplitudes of track geometry: One illustrates the effect of combined track alinement and profile defects; the other illustrates isolated track alinement defects.

Figure 1 depicts an example summarizing the modeling results of the Acela power car at 130 m.p.h. and 9 inches of cant deficiency over combined, 62-foot-wavelength defects. The darker-shaded squares represent a combination of track alinement and surface perturbations where at least one of the VTI safety criteria adopted in this final rule is exceeded, and the solid, black-lined polygon represents the track geometry limits that have been adopted in the final rule. Similar results for other vehicles, speeds and cant deficiencies, and defect wavelengths were created and reviewed. The track geometry limits for the combined perturbations (solid line) were developed following consideration of all of these results. Figure 1 displays how one example case compares with these track geometry limits. As shown, the combined perturbation limits address the most severe combination conditions, though for computational simplicity and implementation purposes, they do not attempt to control all possible combinations. The figure shows that without the addition of the combined defect limits in the upper right and lower left quadrants, which effectively limit track geometry in the up-and-in and down-and-out cases, the single-defect limits would otherwise permit conditions that could cause the VTI safety criteria to be exceeded. For many of these high-speed and high cant deficiency conditions, the net axle lateral force safety criterion was found to be the limiting safety condition.

Figure 2 depicts an example summarizing the modeling results of the Acela power car on Class 7 track at 130 m.p.h. and 9 inches of cant deficiency over isolated track alinement defects having 124-foot wavelengths. Each vertical bar represents the amplitude of the largest alinement perturbation that will not cause an exceedance of one of the VTI safety criteria. Similar results for other vehicles, speeds and cant deficiencies, and defect wavelengths were created and reviewed. In addition, similar results for this range of analysis parameters (vehicles, speeds and cant deficiencies, and defect wavelengths) were created and reviewed using isolated, surface geometry defects. These example results show that, with two exceptions, the geometry limits in the 1998 Track Safety Standards have sufficiently protected against such exceedances under the modeled conditions. Specifically, the VTI limits for net axle lateral force and peak-to-peak carbody lateral acceleration were exceeded on track at the 124-foot, mid-chord offset (MCO) limit for alinement. The modeling showed this limit to be set too permissively for high cant deficiency operations. Consequently, FRA proposed to tighten this alinement limit from 1.25 inches to 1.0 inch for Class 7 track operations above 5 inches of cant deficiency to prevent unsafe vehicle dynamic response. FRA has adopted this proposal in this final rule.

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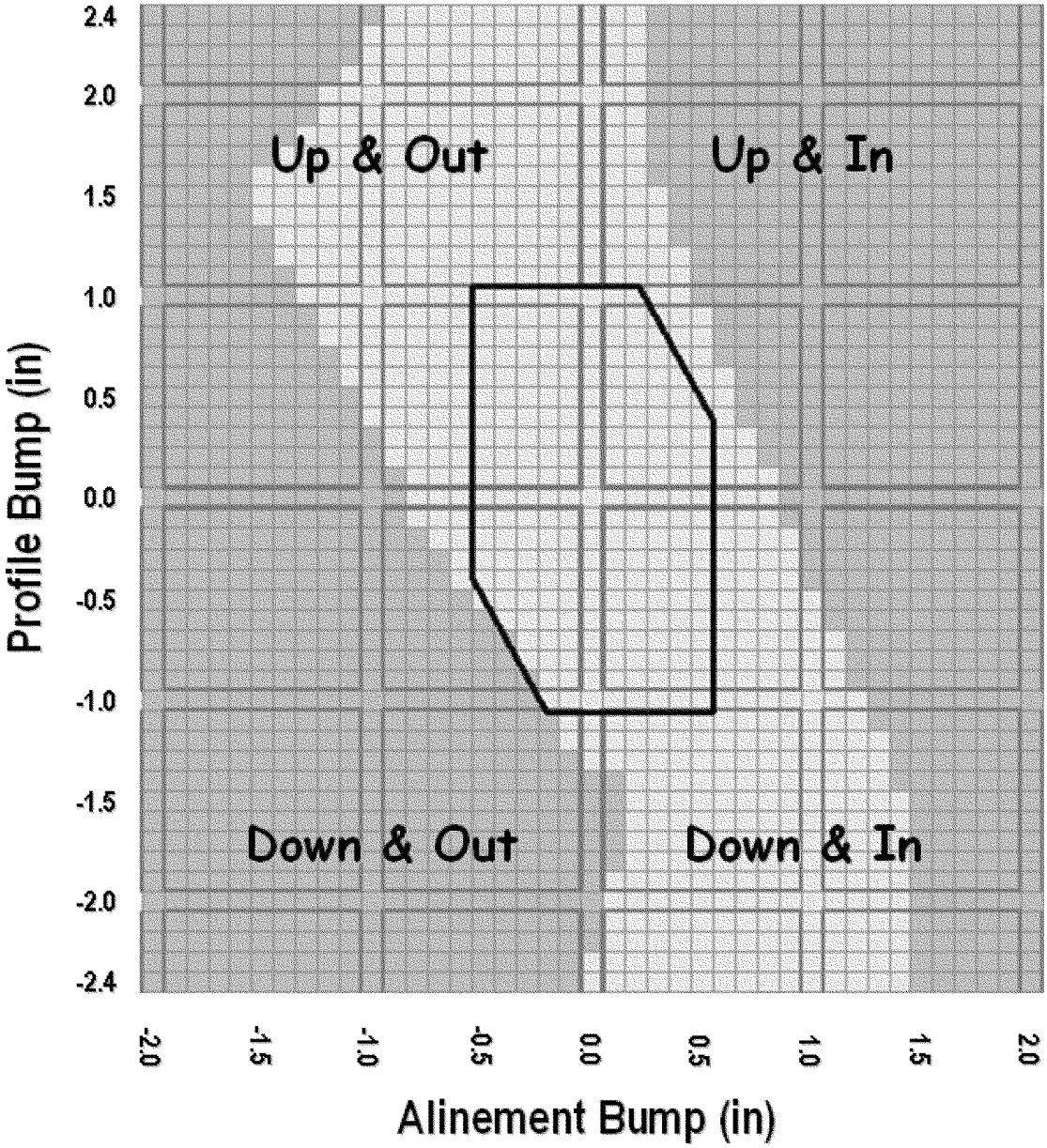

Figure 1. Example of Combined Alinement and Profile (Surface) Deviations, 62-Foot Wavelength, Acela Power Car, 130 m.p.h., 9 inches (in) of Cant Deficiency

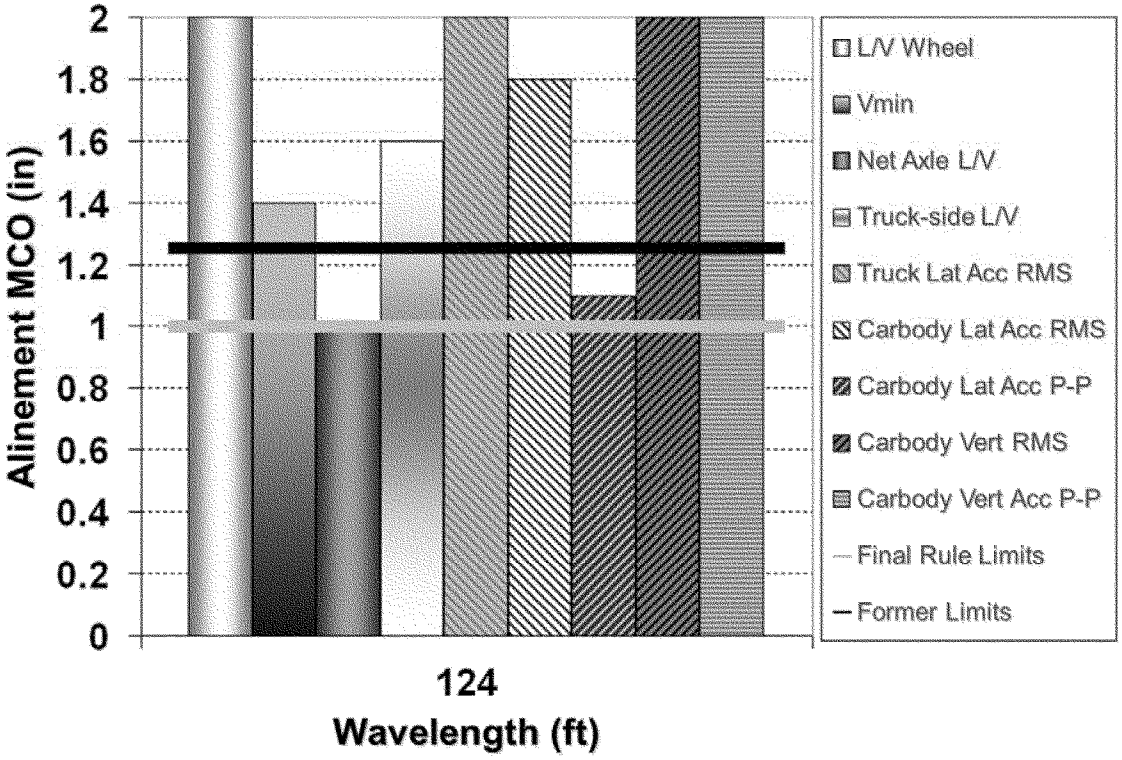

Figure 2. Isolated Alinement Deviations, 124-Foot Wavelength, Acela Power Car, 130 m.p.h., 9 inches of Cant Deficiency

As specified in this final rule, simulations using computer models are now required during the vehicle qualification process as an important tool for the assessment of vehicle performance. These simulations are intended not only to augment on-track, instrumented performance assessments but also to provide a means for identifying vehicle dynamic performance issues prior to service to validate the suitability of a vehicle design for operation over its intended route. In order to evaluate safety performance as part of the vehicle qualification process, simulations are required using both a measured track geometry segment representative of the full route, and an analytically defined track segment containing geometry perturbations representative of minimally compliant track conditions for the respective track class—Minimally Compliant Analytical Track (or MCAT). MCAT is intended to be used to qualify both new vehicles for operation and vehicles previously qualified (on other routes) for operation over new routes. MCAT consists of nine sections; each section is designed to test a vehicle's performance in response to a specific type of perturbation (hunting perturbation, gage narrowing, gage widening, repeated and single surface perturbations, repeated and single alinement perturbations, short warp, and combined down-and-out perturbations). Typical simulation parameters (that vary) include: Speed, cant deficiency, gage, and wheel profile. Figure 3 depicts time traces of the percent of wheel unloading for the Acela coach in a simulated run over MCAT segments for analyzing high cant deficiency curving performance at 160 m.p.h. In this example the most severe response occurs over the warp segment of track. At 9 inches of cant deficiency and a speed of 160 m.p.h., vehicle response exceeds the permitted limit for a wheel to unload to less than 15 percent of its static vertical wheel load for 5 or more continuous feet, as provided in table of VTI safety limits in § 213.333. Please see the Section-by-Section Analysis for a further discussion of MCAT.

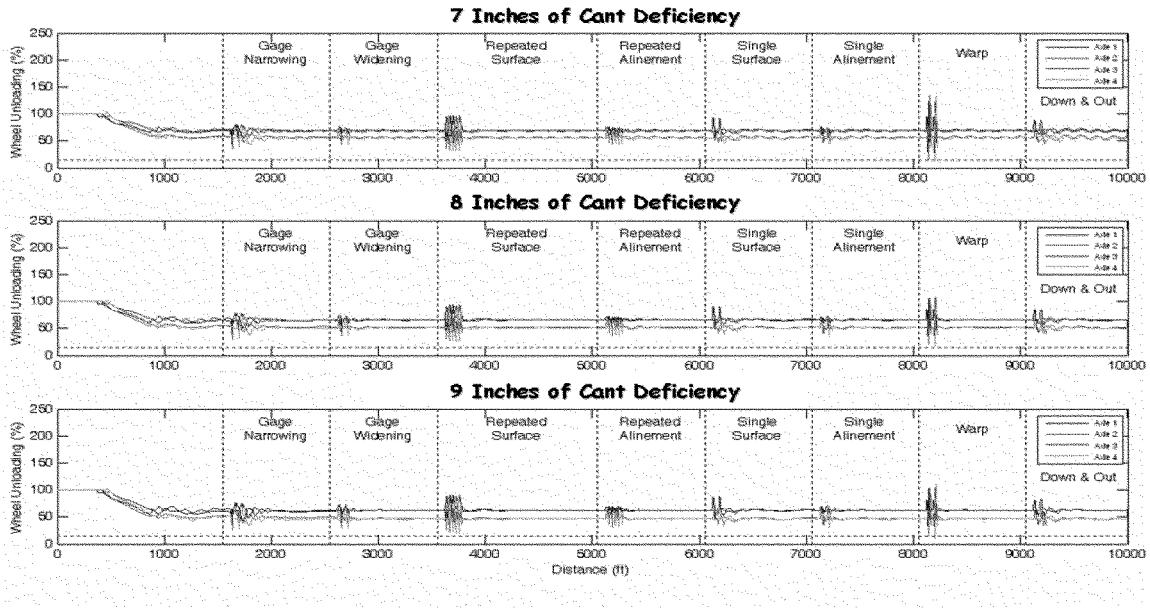

Figure 3. V_{min}, Acela Coach, 160 m.p.h., 31-Foot-Wavelength Perturbations

V. Discussion of Specific Comments and Conclusions

As noted above, FRA received written comments in response to the NPRM from a number of interested parties. Most of the comments are discussed in the Section-by-Section Analysis or in the Regulatory Impact and Notices portion of this final rule directly with the provisions and statements to which they specifically relate. Other comments apply more generally to the final rule as a whole, and FRA is discussing them here. Please note that the order in which the comments are discussed in this document, whether by issue or by commenter, is not intended to reflect the significance of the comment raised or the standing of the commenter.

A. EU and SNCF Comments on Track Geometry Standards

FRA received comments from both the EU and SNCF expressing concerns that, in general, the proposed revisions to the Track Safety Standards would permit significantly larger track geometry variations than equivalent European limits. According to these commenters, such larger track geometry variations could compromise the safety of high-speed operations or have an impact on the achievable comfort values in high-speed service, or both.

FRA's track geometry standards are safety standards and specify minimum safety requirements (i.e., maximum allowable track geometry variations that do not compromise safety). The standards do not address ride comfort, except to the extent that they inherently provide a level of ride comfort as well. However, FRA encourages and expects railroads to adopt their own internal, stricter track maintenance policies to address other concerns such as ride comfort. Thus, FRA expects that a high-speed rail system should normally operate well within the maximum allowable track geometry safety limits.

As discussed above, to establish the safety limits proposed in the NPRM, FRA conducted a set of engineering and vehicle/track dynamic interaction simulation studies, using a range of representative vehicles (i.e., not developed for a particular vehicle type) to identify specific track geometry limits that would provide for safety in the envisioned speed ranges. These studies modeled the effects of specific track geometry variations (consisting of a full range of wavelengths likely to affect vehicle dynamics) on the safe response of the candidate vehicles. In addition, comparisons were made between the proposed limits derived from these modeling results and the track geometry limits used by SNCF, to assess their validity. These comparisons were made for track Classes 6 through 9.

FRA sought clarification from SNCF on its comments on the NPRM, as noted above. FRA prepared a brief presentation outlining the general approach it followed in proposing the NPRM's safety limits, using the Class 9 limits as a specific example. This presentation was sent to SNCF along with three questions related to track geometry and safety criteria currently in use in the French high-speed rail network. These questions were intended to clarify FRA's understanding of SNCF's practices (recognizing that both the track geometry standards used by SNCF, as well as the measurements and calculations used to evaluate compliance with its standards, are implemented in a manner different from FRA's standards) and gather any specific information SNCF has to indicate the need for track geometry limits stricter than those proposed in the NPRM.

Having considered the comments and supplemental response, FRA continues to believe that the approach taken in this rulemaking sets appropriate track geometry limits and safely accounts for vehicle behavior in response to track geometry conditions. Based on the information available to FRA, FRA does not find that more stringent track geometry limits are necessary for the purposes of safety. In this regard, SNCF's supplemental response noted inconsistencies with FRA's initial understanding of SNCF limits which, when taken into account, indicate that FRA's geometry limits actually provide tighter controls on alignment variations. Moreover, SNCF stated that it was about to start research to integrate vehicle dynamics more fully into its own track geometry limits, and expressed interest in SNCF and FRA combining their experience to share information and examine issues together. FRA welcomes the opportunity for such cooperation and a dialogue with SCNF is ongoing.

B. Wheel Unloading From Wind on Superelevated Curves

Several comments were raised on FRA's proposal in §§ 213.57(b) and 213.329(b) of the NPRM that all vehicles requiring qualification of the vehicle/track system under § 213.345 demonstrate that when stopped on a curve having a maximum uniform elevation of 7 inches, no wheel unloads to a value less than 50 percent of its static weight on level track. This proposed modification to the 1998 Track Safety Standards was intended to address potential vehicle rollover and passenger safety issues from side-wind loading should a vehicle be stopped or traveling at very low speeds on highly superelevated curves, helping to prevent complete unloading of the wheels on the high (elevated) rail and incipient rollover.

In commenting on this proposal, Bombardier raised concern that only vehicles seeking qualification under § 213.345 would be subject to the proposed requirement, even though the underlying safety issue relates to all vehicle types operating at any speed and any cant deficiency—not just vehicles seeking qualification under § 213.345. Bombardier stated that a similar provision then contained in §§ 213.57 and 213.329 had been proposed to be removed for this reason. Bombardier also raised concern as to the effect the proposal would have on existing, qualified multi-level passenger equipment. Amtrak commented that only high-speed equipment would in effect be subject to the proposal, and yet the proposal had not been justified for any equipment, be it high-speed, conventional, or freight. NCDOT also commented that if rollover from side-wind loading when stopped on a superelevated curve is a safety issue, then the proposal should apply to either all vehicles, regardless of operating speed or cant deficiency, or none. Like Bombardier, NCDOT noted concern that the proposal could affect the procurement and qualification of bi-level passenger equipment.

After extensive discussion within the Task Force in response to these comments, FRA has decided not to adopt the proposal. The proposal would have effectively superseded the requirements in §§ 213.57 and 213.329 for vehicles seeking qualification under § 213.345, in that, for a vehicle stopped or traveling at very low speeds on a highly superelevated curve, it would have lowered the 60-percent unloading limit to 50 percent, since dynamic effects on wheel unloading would not be a factor, and would have eliminated the 8.6-degree roll requirement for this stationary condition. However, FRA is not aware of passenger rail equipment currently in service in the United States that would not have met the proposal, and the proposal was therefore principally intended to ensure that new passenger rail equipment designs for high-speed or high cant deficiency operation would continue to address this wheel unloading concern. In this regard, FRA had suggested in the Task Force to limit the proposal only to new passenger cars—focusing the provisions on new passenger cars (or new passenger car types), particularly those with higher centers of gravity, to ensure that they do not excessively unload from wind when stationary on highly superelevated curves. Nevertheless, the Task Force could not reach agreement on criteria by which to evaluate such excessive unloading. FRA understood from the Task Force that the same criteria may not be appropriate for all railroads and would depend on specific operating characteristics and the operating environment (e.g, the criteria should account for the fact that the risk is higher in high-wind regions). Ultimately, the Task Force did not believe it necessary to specify a general FRA standard by which to determine whether the equipment poses a rollover-risk due to wind loading when stationary on a superelevated curve.

FRA does make clear in this final rule that for all equipment operating at cant deficiencies above 3 inches, §§ 213.57(d) and 213.329(d) continue to require that when positioned on track with a uniform superelevation equal to the proposed cant deficiency, no wheel of the vehicle may unload to a value less than 60 percent of its static value on perfectly level track. This 60-percent limit retains an allowance for the effects of wind loading on the risk of equipment rollover at the proposed cant deficiency. Please see the discussion of §§ 213.57(d) and 213.329(d) in the Section-by-Section Analysis, below. Nonetheless, FRA notes that the underlying safety issue of equipment rollover from wind loading when stationary on a superelevated curve is not otherwise addressed in the regulations. Consequently, in the absence of a specific Federal standard, FRA expects that each railroad will identify appropriate safety criteria by which to evaluate the risk of equipment rollover from wind loading when stationary on a superelevated curve, and then make the determination that the risk has been safely addressed using those criteria.

VI. Section-by-Section Analysis

Proposed Amendments to 49 CFR Part 213, Track Safety Standards

Subpart A—General

Section 213.1 Scope of Part

This section was amended in the 1998 Track Safety Standards final rule to distinguish the applicability of subpart G from that of subparts A through F, as a result of subpart G's addition to this part by that final rule. Subpart G applies to track over which trains operate at speeds exceeding those permitted for Class 5 track, which supports maximum speeds of 80 m.p.h. for freight trains and 90 m.p.h. for passenger trains. Subpart G was intended to be comprehensive, so that a railroad operating at speeds above Class 5 maximum speeds may refer to subpart G for all of the substantive track safety requirements for high-speed rail and need refer to the sections of the Track Safety Standards applicable to lower-speed operations only for general provisions, i.e., § 213.1 (Scope), § 213.3 (Application), and § 213.15 (Penalties). At the same time, railroads that do not operate at speeds in excess of the maximum Class 5 speeds need not directly refer to subpart G at all.

FRA is maintaining this general structure of part 213 for ease of use, and the requirements of subpart G continue not to apply directly to operations at Class 1 through 5 track speeds. However, in adding new requirements governing high cant deficiency operations for track Classes 1 through 5, certain sections of subparts C and D refer railroads operating at those high cant deficiencies to specific sections of subpart G. In such circumstances, only the specifically-referenced section(s) of subpart G apply, and only as provided. As discussed in this Section-by-Section Analysis, below, the addition of requirements for high cant deficiency operations over lower-speed track classes in this final rule permits railroads to operate at higher cant deficiencies over these track classes without requiring a waiver. Prior to this change in the regulation, railroads had to petition FRA for approval by waiver to operate at the higher cant deficiencies over the lower-speed track classes.

FRA believes that the approach in this rulemaking minimizes the addition of detailed requirements for high cant deficiency operations in subparts C and D. Moreover, with one exception noted below, FRA has not found it necessary to amend this section on the scope of this part, because only certain requirements of subpart G apply to lower-speed track classes and only indirectly for high cant deficiency

operations by cross-referencing the requirements. FRA believes that this approach is consistent with the organization of this part; for example, the 1998 Track Safety Standards final rule revised § 213.57 to reference subpart G for when a track owner or railroad operating above Class 5 track speeds requests approval to operate at greater than 4 inches of cant deficiency on curves in Class 1 through 5 track contiguous to the high-speed track. *See* 63 FR 33992, 34033.

In the NPRM, FRA invited both comment on the proposal and suggestions for any alternative approach for maintaining the ease of use of this part, including whether the subpart headings should be modified to make their application clearer to the rail operations they address, and, if so, in what way(s). FRA did receive a comment from the AAR suggesting that the phrase ''Except as provided in section 213.65,'' be added at the beginning of the second sentence in paragraph (a) of this section. The AAR noted that the second sentence in paragraph (a) provided that the requirements in part 213 apply to specific track conditions ''in isolation,'' while this rulemaking is adding new § 213.65 to address ''combined'' track alinement and surface deviations. Therefore, the AAR recommended adding the introductory text to make § 213.1 consistent with new § 213.65.

This final rule adopts the AAR's recommendation to make this section consistent with the changes to this part. Yet, in this regard, more than § 213.65 is being added that addresses conditions existing in combination. For example, § 213.332 is also being added in subpart G to address combined track alinement and surface deviations for the higher-speed track classes, and the MCAT qualification requirements in new Appendix D address ''combined perturbation.'' As a result, the final rule modifies paragraph (a) by adding the introductory words ''In general'' at the beginning of the second sentence. While the requirements in this part do apply, in general, to track conditions existing in isolation, the provisions discussed above are not focused exclusively on track conditions in isolation, and this modification preserves flexibility for encompassing these and other similar provisions without specifically enumerating them. The Task Force, including the AAR, concurred with this modification to the final rule.

As a separate matter, FRA noted that it was not proposing to revise and re-issue the Track Safety Standards in full, as was done in the 1998 final rule. Instead, FRA is amending only certain portions of the Track Safety Standards. Therefore, FRA explained in the NPRM that this final rule needs to ensure that both the new and revised sections appropriately integrate with those sections of this part that are not amended, and that appropriate time is provided to phase-in the new and amended sections. FRA noted that, in general, the Task Force recommended that both new and revised sections become applicable one year after the date the final rule is published, to allow the track owner or operating railroad, or both, sufficient time to prepare for and adjust to meeting the new requirements. Examples of such adjustments may include changes to operating, inspection, or maintenance practices, such as for compliance with §§ 213.57, 213.329, 213.332, 213.333 and 213.345, as amended.

FRA also explained that it was considering providing the track owner or operating railroad the option of electing to comply sooner with the new and amended requirements, upon written notification to FRA. FRA noted that such a request for earlier application of the new and amended requirements would indicate the track owner's or railroad's readiness and ability to comply with all of the new and amended requirements—not just certain of those requirements. Because of the interrelationship of the amendments, FRA believes that virtually all of them need to apply simultaneously to maintain their integrity. FRA invited comment on formalizing this approach for this final rule; however, no specific comment was received.

In preparing the final rule, FRA decided that the more appropriate way to implement the rule's requirements is to make the rule effective 120 days after its publication, rather than generally make the revisions applicable one year after publication. While FRA did note in the NPRM that it intended the final rule to become effective 60 days after its publication, FRA also explained that since there cannot be two different sections of the same CFR unit in effect under the same section heading, a temporary appendix was being considered to separate revised sections from their former provisions to allow for continued compliance with those former sections for a track owner or railroad not electing to comply sooner with all of the revised sections of part 213. By lengthening the effective date of the final rule so that all of the changes go into effect simultaneously but at a later time, the rule is clearer and provides additional time in which to make preparations for complying with the new requirements. FRA has further considered the preparations that may be necessary, including changes to operating, inspection, and maintenance practices, and believes that they can be completed (and implemented) within this period. In particular, FRA believes that it should take no more than a month of labor hours to prepare all of a railroad's automated, vehicle-based inspection systems and software to measure and process the necessary parameters to determine compliance with this rule, based on the relatively limited changes to the existing safety limits and the number of new parameters that must be calculated. FRA also notes that the 1998 Track Safety Standards final rule took effect 90 days after its publication, *see* 63 FR 33991–33992, although certain provisions were made applicable at a later date.

Section 213.7 Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track

This section recognizes that work on or about a track structure supporting heavy freight trains or passenger operations, or both, demands the highest awareness of employees of the need to perform their work properly. At the same time, the wording of this section has literally required that each individual designated to perform such work know and understand the requirements of this part, detect deviations from those requirements, and prescribe appropriate remedial action to correct or safely compensate for those deviations, regardless whether that knowledge, understanding, and ability with respect to all of this part were necessary for that individual to perform his or her duties. While qualified persons designated under this section have not been directly required to know, understand, or apply requirements applicable only to higher-speed track classes in subpart G (pursuant to § 213.1(b)), the addition of vehicle qualification and testing requirements for high cant deficiency operations in lower-speed track classes, in particular, adds a level of complexity that may be outside the purview of track foremen and inspectors in fulfilling their duties.

As a result, the Task Force recommended and FRA agrees that this rule add text clarifying that the requirements for a person to be qualified under this section concern those portions of this part necessary for the performance of that person's duties. This section continues to require that a person designated under it possess the knowledge, understanding, and ability necessary to supervise the restoration and renewal of track, or to perform

inspections of track, or both, for which he or she is responsible. Yet, adding the text makes clear that the person is not required to know or understand specific requirements of this part not necessary to the fulfillment of that person's duties. In this regard, the AAR commented that these changes are particularly needed in light of the adoption of high cant deficiency requirements in this final rule. FRA does not believe that safety will be in any way diminished by these changes, and they were supported by the Task Force.

Section 213.14 Application of Requirements to Curved Track

This is a new section that is being added to help define the application of requirements for curved track, following publication of and comment on the NPRM. Rather than define what is meant by curved track in each section where requirements for curved track appear, FRA believes it more appropriate to provide the definition here for all of part 213. This new section states that, unless otherwise provided in this part, requirements specified for curved track apply only to track having a curvature greater than 0.25 degree. This definition is intended to apply in all sections where limits for curved track are specified, unless otherwise provided.

As further explanation, in its comments on the NPRM Bombardier observed that the track geometry alinement limits proposed in § 213.55(b) were those recommended by the Task Force, except for what was proposed as footnote 5—i.e., that curved track limits be applied only when track curvature is greater than 0.25 degree. *See* 75 FR 25957. Bombardier stated that this proposed footnote was not included in the rule text recommended by the Task Force and that FRA did not provide a technical justification for its inclusion in the proposed rule. Bombardier believed that this proposed footnote would only be applicable at very high speeds and would therefore be irrelevant. Consequently, Bombardier recommended the proposed footnote's deletion in § 213.55(b), as well as in the following sections regarding application of curved track limits: §§ 213.63(b), 213.327(b) and (c), and 213.331(a) and (b).

In discussing the proposed footnote with the Task Force, the Task Force recognized that the primary intent was to provide a definitive demarcation of curved track from tangent track so that track inspectors and automated track geometry measurement systems can properly apply the more stringent track geometry limits required for high cant deficiency operation in track Classes 1 through 5. Continuing with the example of § 213.55, should track curvature be no greater than 0.25 degree, the limits in § 213.55(a) for tangent track apply. For practical consideration in the way curvature is determined, and based on dynamic simulations of VTI performance by and experience with Acela trainsets on Amtrak's Northeast Corridor, a 0.25-degree (15-minute) curvature was chosen as this demarcation. This same reasoning applies to the inclusion of this provision for the proper application of track geometry limits not only in § 213.55, but also in §§ 213.63, 213.327 and 213.331, as specifically cited by Bombardier. Therefore, the Task Force recommended applying this provision to each of these sections.

Additionally, in preparing the final rule FRA noted that since curved track limits apply elsewhere in this part, whether or not high cant deficiency operations are conducted over the track, this provision for determining when to apply curved track limits could apply to those sections as well. FRA examined all of part 213 and found it appropriate to apply this provision generally throughout the entirety of the part, unless otherwise specified. The Task Force concurred with this addition, but nevertheless recommended that FRA restate this section in subpart G to make clear that it applies together with the other provisions governing the high-speed track classes. FRA has therefore added an identical provision in subpart G; please see the discussion of § 213.313. FRA believes that these new sections will help to ensure that curved track limits are applied in a uniform and proper manner.

Subpart C—Track Geometry

Section 213.55—Track Alinement

This section specifies the maximum alinement deviations allowed for tangent and curved track in Classes 1 through 5. Alinement is the localized variation in curvature of each rail. On tangent track, the intended curvature is zero, and thus the alinement is measured as the variation or deviation from zero. In a curve, the alinement is measured as the variation or deviation from the ''uniform'' alinement over a specified distance. As proposed, the section heading has been modified so that it reads ''Track alinement,'' instead of ''Alinement,'' for clarity.

The former track alinement limits in this section have been redesignated as paragraph (a) and remain unchanged. Paragraph (b) has been added as a new provision containing tighter, single-deviation geometry limits for operations above 5 inches of cant deficiency on curved track, and includes both 31-foot and 62-foot MCO limits. These limits are based on the results of simulation studies to determine the safe amplitudes of track geometry alinement variations. *See Technical Background,* Section IV.B, above. FRA believes that adding the track geometry limits in paragraph (b) is necessary to provide an equivalent margin of safety for operations at higher cant deficiency. FRA also notes that, as proposed, the requirements for track Classes 1 and 2 in paragraph (b) reference footnote 2 of paragraph (b), which provides that restraining rails or other systems may be required for derailment prevention.

As provided in § 213.14, limits for curved track in paragraph (b) apply only to track having a curvature greater than 0.25 degree. Consequently, it is unnecessary to add proposed footnote 5, which would have contained the same instruction. Please see § 213.14 for a full discussion of the application of curved track limits.

Section 213.57 Curves; Elevation and Speed Limitations

This final rule makes substantial changes to this section, which specifies the requirements for safe curving speeds in track Classes 1 through 5. Notably, changes have been made to the qualification requirements and approval procedures for vehicles intended to operate at more than 3 inches of cant deficiency. For consistency with the higher speed standards in subpart G, cant deficiency is no longer limited to a maximum of 4 inches in track Classes 1 through 5. Prior to this change, this section specified qualification requirements for vehicles intended to operate only up to 4 inches of cant deficiency on track Classes 1 through 5 unless the track was contiguous to a higher-speed track. Consequently, vehicles intended to operate at more than 4 inches of cant deficiency on routes not contiguous to a higher-speed track were only permitted to operate under a waiver in accordance with part 211 of this chapter. This section now includes procedures for such vehicles to operate safely at higher cant deficiencies without the necessity of obtaining a waiver.

Both portions of paragraph (a) are revised; the first portion is revised as proposed without any comment. The maximum elevation of the outside rail of a curve may not be more than 8 inches on track Classes 1 and 2, and 7 inches on track Classes 3 through 5. Formerly, the provision had been stated in terms of the maximum crosslevel of

the outside rail, with the same limits. As crosslevel is a function of elevation differences between two rails, and is specifically addressed by other provisions of this rule, specifically § 213.63, this clarification is intended to focus the provision on the maximum allowable elevation of a single rail.

Numerous comments were received on FRA's proposal concerning the second portion of paragraph (a), however, to restrict configuring track so that the outside rail of a curve is designed to be lower than the inside rail while allowing for a deviation up to the limits provided in § 213.63. In issuing the NPRM, FRA noted that the Task Force had recommended removing this portion of paragraph (a), which formerly stated that ''[e]xcept as provided in § 213.63, the outside rail of a curve may not be lower than the inside rail.'' Concern had been raised in the Task Force that this statement potentially conflicted with the limits in § 213.63 for ''the deviation from * * * reverse crosslevel elevation on curves.'' Nonetheless, FRA had believed that these provisions complemented each other—rather than conflict—addressing both the designed layout of a curve and deviations from that layout through actual use. In the NPRM, FRA stated that the requirement in paragraph (a) was intended to be a design restriction against configuring track so that the outside rail of a curve is lower than the inside rail, while the limits at issue in § 213.63 were to govern local deviations from uniform elevation—i.e., from the designed elevation—that occur as a result of changes in conditions. However, as discussed below, FRA recognizes that its proposal should have been more complete, and FRA is modifying the final rule based on the comments received.

In commenting on the NPRM, SEPTA noted that there are at least two situations when it is desirable to incorporate minimal reverse elevation by design: (1) In grade crossings in which the roadway profile is opposed to the desired track elevation; and (2) in special trackwork where a turnout may be located in a slight curve which is opposite the turnout curve. SEPTA stated that in these situations incorporating reverse elevation may be desired to minimize the potential highway hazard in a grade crossing and properly accommodate connections to sidings and other facilities. Accordingly, SEPTA believed that criteria should be developed to permit a minimal amount of reverse superelevation by design.

NJ Transit also commented that the proposal would impact a significant number of switches in its system where reverse elevation has been designed into curves. Specifically, NJ Transit cited switches in interlockings at several junctions such as its Roseville Avenue Interlocking, potentially impacting 65 daily trains destined to and from the Montclair Line; Amtrak's Hunter Interlocking, potentially impacting 53 daily NJ Transit trains destined to and from the Raritan Valley Line; its Far Hills Interlocking, potentially impacting 49 daily NJ Transit Gladstone Line trains; and other possible locations at junctions on the Northeast Corridor that would be potentially impacted. NJ Transit believed that future interlocking reconfigurations could also be affected if the physical characteristics preclude even the temporary location of a turnout in a curve that might involve reverse elevation, and therefore requested that the proposal not be adopted.

Likewise, Amtrak objected to the proposal, believing that it would represent a fundamental restructuring of basic track design and geometry tenets and that implementation of the proposed language would have enormous consequences for rail service (both passenger and freight) on the Northeast Corridor. Amtrak noted that there are more than 77 locations on the Northeast Corridor between Washington, Boston, and Harrisburg where reverse elevation exists in track by design. According to Amtrak, in the majority of these locations, the design has been in service for more than 100 years without causing any safety issues. Amtrak raised concern that compliance with the rule as proposed would engender myriad problems, such as forcing it to take large sections of the Northeast Corridor out of service that contain curves with reverse elevation by design. Amtrak cited the example of the River Interlocking north of Baltimore that would need to be taken out of service, inhibiting the Norfolk Southern Railway Company's access to the Port of Baltimore. Amtrak stated that reconstructing some or all of the existing reverse-elevated curves would be a massive, time-consuming and prohibitively expensive undertaking that would take years to implement and cost in excess of $200 million.

The AAR also objected to the proposal, believing that it resulted from a misunderstanding as to when it is appropriate for the outside rail to be lower than the inside rail (for track Classes 5 and below). The AAR noted that there are times when, by design, the outside rail must be lower than the inside rail. For example, the AAR cited that at thousands of mainline locations the outside rail is lower than the inside rail where turnouts come off the outsides of superelevated curves. According to the AAR, there is no realistic alternative to such designs, and they have been used for over a century. The AAR also cited the use of reverse superelevation on industrial or other tracks where there is a hard pull around sharp curves and reverse elevation is used to prevent ''stringlining'' derailments. The AAR maintained that FRA incorrectly asserted in the NPRM that § 213.63 is intended to address only those changes that occur ''through actual use,'' stating that § 213.63 clearly is intended to address situations, as discussed above, that occur at the design stage as well. Nor did the AAR believe there to be a conflict between §§ 213.57(a) and 213.63. The AAR stated that § 213.57(a) addresses the general rule that the outside of the rail may not be lower than the inside of the rail, while § 213.63 addresses situations where the general rule does not apply. Noting that the proposed change was not part of the Task Force's consensus on the proposed rule, the AAR recommended that FRA either delete the second sentence in paragraph (a) or retain the original wording in the regulation.

After considering the comments on the proposal and discussing them with the Task Force, FRA is modifying the rule to state that the outside rail of a curve may not be lower than the inside rail by design, except when engineered to address specific track or operating conditions, and that the limits in § 213.63 apply in all cases. FRA continues to believe that the former rule text could give the mistaken impression that it is appropriate to design reverse elevation into curves as the nominal condition for all curves. Nonetheless, FRA appreciates the comments raised, noting that reverse elevation is designed into certain curves both out of necessity and for safety reasons. FRA did not intend its proposal to nullify such engineering design. As modified, the rule text addresses both the concerns raised by FRA and those raised by the commenters, and the Task Force concurred with the revision.

As explained in the discussion of specific comments and conclusions section of the preamble, above, what was proposed as paragraph (b) is not included in this final rule. Please see *Wheel Unloading from Wind on Superelevated Curves,* Section V.B., for an explanation of FRA's treatment of that proposal, as well as of paragraph (d), below. Instead, what was proposed as paragraph (c) is designated as paragraph (b) in this final rule.

As proposed, the V_{max} formula in paragraph (b) determines the maximum

allowable posted timetable operating speed for curved track based on the qualified cant deficiency (inches of unbalance), E_u, for the vehicle type. This final rule also amends paragraph (b) to reference a new footnote 2 to permit the vehicle type to operate at the cant deficiency for which it is approved, E_u, plus 1 inch, if the actual elevation of the outside rail, E_a, and the degree of track curvature, D, change as a result of track degradation. As modified, this paragraph is intended to provide a tolerance to account for the effects of local crosslevel or curvature conditions on V_{max} that may result in the actual cant deficiency exceeding the cant deficiency approved for the equipment, i.e., the actual operating speed may exceed the maximum allowable posted timetable operating speed. Without this tolerance, these track conditions could generate a limiting speed exception, and some railroads have adopted the approach of reducing the cant deficiency of the vehicle in order to avoid these exceptions. FRA believes that this 1-inch tolerance is supported by operational experience and complemented by related standards acting to mitigate safety concerns. For instance, the V_{max} formula is not intended to replace FRA's track geometry limits, which more clearly focus on individual track irregularities with shorter wavelengths. These track geometry limits apply independently and act independently to limit the maximum allowable speed for a track segment based on the condition of the track.

FRA noted in the NPRM that it was the consensus of the Task Force to clarify footnote 1 to state, in part, that actual elevation, E_a, for each 155-foot track segment in the body of a curve is determined by averaging the elevation for 11 points through the segment at 15.5-foot spacing—instead of for 10 points, as was stated in the original footnote. FRA explained that the Track Safety Standards Compliance Manual (Compliance Manual) provides that the ''actual elevation and curvature to be used in the [V_{max}] formula are determined by averaging the elevation and curvature for 10 points, including the point of concern for a total of 11, through the segment at 15.5-[foot] station spacing.'' See the guidance on § 213.57 provided in Chapter 5 of the Manual, which is available on FRA's Web site (*www.fra.dot.gov*). FRA therefore believes that this clarification to footnote 1 makes the footnote more consistent with the manner in which the rule is intended to be applied.

In its comments on the NPRM, the AAR believed that FRA departed from the RSAC consensus in proposing to change the way elevation is calculated. Further, the AAR did not find persuasive FRA's reliance on the Compliance Manual as a justification for changing the requirement, stating that the Compliance Manual is inconsistent with the rule text. In discussing these comments with the Task Force, the Task Force agreed that the proposed footnote be adopted in the final rule. While FRA stated in the NPRM that it was the consensus of the Task Force to clarify footnote 1, FRA recognizes that there was no such explicit consensus, as the AAR noted. Nevertheless, FRA believes that this clarification to footnote 1 does make the footnote more consistent with the manner in which the rule is intended to be applied, and it is not intended to add any requirement. In calculating elevation, 10 measurements are taken from the point of concern—5 on each side—so that 11 points are actually averaged, given that the point of concern is included in the calculated average. The AAR did not oppose adoption of this clarification after the Task Force discussion.

Former footnote 2 has been redesignated as footnote 3 without substantive change.

Paragraph (c), proposed as paragraph (d) in the NPRM, provides that all vehicle types are considered qualified for up to 3 inches of cant deficiency, as allowed by the former rule.

Paragraph (d), proposed as paragraph (e) in the NPRM, is being modified to specify the requirements for vehicle qualification over track with more than 3 inches of cant deficiency. Prior to this modification, ''static lean'' qualification requirements were specified for vehicles intended to operate up to an allowable 4 inches of cant deficiency on track Classes 1 through 5. These requirements limited the carbody roll to 5.7 degrees with respect to the horizontal when the vehicle was standing on track with 4 inches of superelevation, and limited the vertical wheel load remaining on the raised wheels to no less than 60 percent of their static level values and carbody roll to no more than 8.6 degrees with respect to the horizontal when the vehicle was standing (stationary) on track with 6 inches of superelevation. In the final rule, cant deficiency is no longer limited to a maximum of 4 inches in track Classes 1 through 5. The revised requirements, consistent with the higher-speed standards in § 213.329, limit the vertical wheel load remaining on the raised wheels to no less than 60 percent of their static level values and limit carbody roll for passenger cars to no more than 8.6 degrees with respect to the horizontal when the vehicle is standing (stationary) on track with a uniform superelevation equal to the proposed cant deficiency. Consequently, the rule no longer imposes a 6-inch superelevation static lean requirement generally; rather, the amount of superelevation is dependent on the proposed cant deficiency. For example, if the proposed cant deficiency is 5 inches, the superelevation used for demonstrating compliance with this paragraph is also 5 inches.

The requirements in paragraph (d) may be met by either static or dynamic testing. In either case, the vehicle type must be tested in a ready-for-service condition. In consultation with the Task Force, FRA is clarifying that the vehicle type be tested in a ready-for-service condition, i.e., in the same vehicle/track performance condition in which it would be in passenger service. At the same time, FRA is clarifying paragraph (e), below, so that the load condition under which testing is performed is included in the description of the test procedure. For example, the vehicle type may or may not be loaded to simulate passengers on board, and this information would be necessary for a complete evaluation of the vehicle's performance.

As noted, the static lean test limits the vertical wheel load remaining on the raised wheels to no less than 60 percent of their static level values and limits the roll of a passenger carbody to 8.6 degrees with respect to the horizontal, when the vehicle is standing on track with superelevation equal to the proposed cant deficiency. The dynamic test limits the steady-state vertical wheel load remaining on the low rail wheels to no less than 60 percent of their static level values and limits the lateral acceleration in a passenger car to 0.15g steady-state, when the vehicle operates through a curve at the proposed cant deficiency. (Please note that steady-state, carbody lateral acceleration, i.e., the tangential force pulling passengers to one side of the carbody when traveling through a curve at higher than the balance speed, should not be confused with sustained, carbody lateral oscillatory accelerations, i.e., continuous side-to-side oscillations of the carbody in response to track conditions, whether on curved or tangent track.) This 0.15g steady-state lateral acceleration limit in the dynamic test is intended to provide consistency with the 8.6-degree roll limit in the static lean test, in that it corresponds to the lateral acceleration a passenger would experience in a standing vehicle whose carbody is at a roll angle of 8.6 degrees with respect to the horizontal. The former 5.7-degree roll limit, which

limited steady-state, carbody lateral acceleration to 0.1g, has been removed.

Measurements and supplemental research have indicated that a steady-state, carbody lateral acceleration limit of 0.15g is considered to be the maximum, steady-state lateral acceleration above which jolts from vehicle dynamic response to track deviations can present a hazard to passenger safety. While other FRA vehicle/track interaction safety criteria principally address external safety hazards that may cause a derailment, such as damage to track structure and other conditions at the wheel/rail interface, the steady-state, carbody lateral acceleration limit specifically addresses the safety of the interior occupant environment. For comparison purposes, it is notable that the International Union of Railways (UIC) Code 518, Testing and Approval of Railway Vehicles from the Point of View of Their Dynamic Behaviour—Safety—Track Fatigue—Ride Quality, Ed. 4 (2009), has adopted a steady-state, carbody lateral acceleration limit of 0.15g. FRA does recognize that making a comparison with such a specific limit in another body of standards needs to take into account what related limits are provided in the compared standards and what the nature of the operating environment is to which the compared standards apply. FRA therefore invited comment whether such a comparison is appropriate here—whether, for example, there are enhanced or additional vehicle/track safety limits that apply to European operations, either through industry practice or governing standards, or both.

In their comments on the NPRM, SNCF responded that, concerning curves and cant deficiency design, the limit of 0.15g for steady-state, carbody lateral acceleration is justified. SNCF stated that this value is usually considered a comfort limit for curve design and is the limit value accepted for passenger cars. SNCF further noted that for freight cars the accepted limit is 0.13g, and that, in European rules, the 0.15g value corresponds to an exceptional value of cant deficiency, while the recommended value is about 0.14g.

FRA notes that increasing the steady-state, carbody lateral acceleration limit from 0.1g to 0.15g allows for operations at higher cant deficiency on the basis of acceleration before tilt compensation is necessary. This increase in cant deficiency without requiring tilt compensation is larger for a vehicle design whose carbody is less disposed to roll on its suspension when subjected to an unbalance force, since carbody roll on curved track has a direct effect on steady-state, carbody lateral acceleration. For example, a vehicle having a completely rigid suspension system (S = 0) would have no carbody roll and could operate without a tilt system at a cant deficiency as high as 9 inches, at which point the steady-state, carbody lateral acceleration would be 0.15g, which would correlate to an 8.6-degree roll angle between the floor and the horizontal when the vehicle is standing on track with 9 inches of superelevation. The suspension coefficient ''S'' is the ratio of the roll angle of the carbody on its suspension (measured relative to the inclination of the track) to the cant angle of the track (measured relative to the horizontal) for a stationary vehicle standing on a track with superelevation. A suspension coefficient of 0 is theoretical but neither practical nor desirable, because of the need for flexibility in the suspension system to handle track conditions and provide for occupant comfort and safety. Assuming that a car has some flexibility in its suspension system, say S = 0.3, the car could operate without a tilt system at a cant deficiency as high as approximately 7 inches, at which point the steady-state, carbody lateral acceleration would be 0.15g, which would correlate to an 8.6-degree roll angle between the floor and the horizontal when the vehicle is standing on track with 7 inches of superelevation. To operate at higher cant deficiencies and not exceed the limits, the vehicle would need to be equipped with a tilt system so that the floor actively tilts to compensate for the forces that would otherwise cause the limits to be exceeded.

Under the former FRA requirements, using the above examples, a vehicle having a completely rigid suspension system (S = 0) could operate without a tilt system at a cant deficiency no higher than 6 inches, at which point the steady-state, carbody lateral acceleration would be 0.1g, which would correlate to a 5.7-degree roll angle between the floor and the horizontal when the vehicle is standing on track with 6 inches of superelevation. Assuming that a vehicle has some flexibility in its suspension system, again say S = 0.3, the vehicle could operate without a tilt system at a cant deficiency no higher than approximately 4.7 inches, at which point the steady-state, carbody lateral acceleration would be 0.1g, which would correlate to a 5.7-degree roll angle between the floor and the horizontal when the vehicle is standing on track with 4.7 inches of superelevation.

FRA notes that the less stringent steady-state, carbody lateral acceleration limit and carbody roll angle limit adopted in this final rule will minimize both the need to equip vehicles with tilt systems at higher cant deficiencies and the costs associated with such features, as well. Moreover, by facilitating higher cant deficiency operations, savings may also result from shortened trip times. These savings may be particularly beneficial to passenger operations in emerging high-speed rail corridors, enabling faster operations through curves.

Of course, any such savings should not come at the expense of safety, and FRA has adopted additional track geometry requirements for operations above 5 inches of cant deficiency, whether or not the vehicles are equipped with tilt systems. These additional track geometry requirements were developed to control for undesirable vehicle response to track conditions that could pose derailment concerns. Nonetheless, the VTI limits on transient accelerations may need to be stricter when combined with higher steady-state lateral acceleration, to address passenger ride safety concerns. Additional research regarding passenger response to vibration is needed to establish this relationship and model this effect. While the tighter geometry limits at high cant deficiency that have been added in this final rule were not specifically developed to address such concerns, they may help to control transient, carbody acceleration events that could pose ride safety concerns for passengers subjected to higher steady-state lateral accelerations. These additional track geometry requirements apply only to operations above 5 inches of cant deficiency, where steady-state, carbody lateral acceleration may approach 0.15g for typical vehicle designs. In this regard, during Task Force discussions, Amtrak stated that Amfleet equipment has been operating at up to 5 inches of cant deficiency (with approximately 0.13g steady-state, carbody lateral acceleration levels) without resulting in passenger ride safety issues. FRA is also not aware of any general safety issue involving passengers losing their balance and falling due specifically to excessive steady-state, carbody lateral acceleration levels in current operations.

Nonetheless, a transient carbody acceleration event that poses no derailment safety concern could very well cause a standing passenger to lose his or her balance and fall. Although FRA is not aware of much published data on the effect that transient, carbody acceleration events have on passenger

ride safety, it is recognized that the presence of steady-state, carbody lateral acceleration will generally reduce the margin of safety for standing passengers to withstand transient, lateral acceleration events and not lose their balance. If such passenger ride safety issues were more clearly identified, additional track geometry or other limits could potentially be proposed to address them. However, based on the information available to the Task Force, the Task Force did not recommend additional limits to address potential passenger ride safety concerns that may result from transient, carbody acceleration events either alone or when combined with steady-state, carbody lateral acceleration. The Task Force also took into account that, as one of several modes of transportation offered to the general public, rail travel need provide a level of passenger comfort to both attract and retain riders. As a result, the riding characteristics of passenger rail vehicles should by railroad practice be subject to acceptable criteria for passenger ride comfort, and such criteria for passenger ride comfort should be more stringent than those for passenger ride safety. Nonetheless, to fully inform FRA's decisions in preparing the final rule, FRA specifically invited public comment on this discussion in the NPRM and the proposal to set the steady-state, carbody lateral acceleration limit at 0.15g. FRA requested specific comment on whether the proposed rule appropriately provided for passenger ride safety, and if not, requested that the commenters state what additional requirement(s) should be imposed, if any.

As noted above, in commenting on the NPRM, SNCF agreed that the limit of 0.15g for steady-state, carbody lateral acceleration is justified in that this value is usually considered a comfort limit for curve design and is the limit value accepted for passenger cars. SNCF specifically commented that, in European rules, the 0.15g value corresponds to an exceptional value of cant deficiency, while the recommended value is about 0.14g. FRA sees no conflict with these comments; measurements and supplemental research have indicated that a steady-state, carbody lateral acceleration limit of 0.15g is considered to be the maximum, steady-state lateral acceleration above which jolts from vehicle dynamic response to track deviations can present a hazard to passenger safety. For the foregoing reasons, FRA has therefore adopted the proposal in the final rule.

The changes to this section also separate and clarify the submittal requirements to FRA to obtain approval for the qualifying cant deficiency of a vehicle type (paragraph (e)) and to notify FRA prior to the implementation of the approved higher curving speeds (paragraph (f)). As discussed above, FRA is clarifying paragraph (e) so that the load condition under which the testing is performed is included in the description of the test procedure. Additional clarification in paragraph (e) has been included for submitting suspension system maintenance information. The requirement for submitting suspension system maintenance information applies to vehicle types not subject to parts 238 or 229 of this chapter, such as a freight car operated in a freight train, and then only to safety-critical components. Paragraph (f) also clarifies that in approving the request made pursuant to paragraph (e), FRA may impose conditions necessary for safely operating at the higher curving speeds.

Former footnote 3 is being redesignated as footnote 4 and modified in conformance with the changes in this final rule. Former footnote 3 reflected that this section previously allowed a maximum of 4 inches of cant deficiency; hence, the static lean test requirement to raise and lower the car on one side by 4 inches. Former footnote 3 also specified a cant excess requirement to raise and lower the car on one side by 6 inches. As proposed, FRA is removing the 4-inch limit on cant deficiency, and the cant-excess requirement has been addressed, as explained above. Thus, this footnote, now footnote 4, refers to ''the proposed cant deficiency'' instead of 4 inches of cant deficiency. FRA also notes that, as proposed, it has removed the statement in the former footnote that the ''test procedure may be conducted in a test facility.'' Testing may of course be conducted in a test facility, but the statement could cause confusion that testing may be conducted only in a test facility. No such limitation is intended. Separately, FRA has slightly modified the footnote from that proposed in the NPRM based on a concern raised during the Task Force's consideration of the draft final rule. The test procedure's testing sequence could be wrongly construed to indicate that the roll angle is measured after the wheels are lowered; FRA agrees and has corrected this ambiguity.

Former paragraph (e) is being moved to new paragraph (g), which was proposed as paragraph (h) in the NPRM. As revised, this paragraph (g) is identical to two other provisions in this final rule: § 213.329(g)—the subpart G counterpart to this section—and § 213.345(i). Please see the discussion of § 213.345(i), below. The Task Force agreed that the purpose of these provisions is the same and therefore recommended that the same text be included. FRA agrees and has modified the rule accordingly.

Paragraph (h) was proposed as paragraph (j) in the NPRM to clarify that vehicle types that have been permitted by FRA to operate at cant deficiencies, E_u, greater than 3 inches prior to the date of publication of the final rule in the **Federal Register** would be considered qualified under this section to operate at those permitted cant deficiencies over the previously operated track segments(s). Consequently, before the vehicle type could operate over another track segment at such cant deficiencies, FRA proposed that the vehicle be qualified as provided in this section. FRA made a similar proposal in § 213.329(i) (now § 213.329(h)).

In commenting on the NPRM, Amtrak stated the tests proposed in this section and in § 213.329 for the higher-speed track classes would be wasteful to repeat because, unlike the tests proposed for § 213.345, the tests proposed here would not have been conducted under ''local'' conditions but rather in a static testing facility having no connection to the location of the proposed service. Amtrak therefore wondered what types of conditions FRA believed would be uncovered during this testing process before permitting the vehicle types to operate at the same cant deficiencies on other track segments. Amtrak believed that it would be simply repeating the exact same test on the exact same car at the exact same test facility, and therefore found it difficult to find any justification for the proposed limitation.

FRA discussed the proposal and the comments received with the Task Force. The Task Force recommended that vehicle types that have been permitted by FRA to operate at cant deficiencies, E_u, greater than 3 inches but not exceeding 5 inches be considered qualified under this section to operate at those permitted cant deficiencies over all track segments—not only over previously operated segments. FRA agrees that extending the nature of the qualification in this way is appropriate given that the requirements of this section are static or steady-state and do not directly reflect the ''local'' interaction of the vehicle and the track. Paragraph (h)(1) adopts this recommendation, and FRA makes clear that it applies not only to previous permission by FRA to operate at these cant deficiencies, but also prospectively to vehicle types when they are approved

by FRA to operate at these cant deficiencies. Nonetheless, a requirement has been included in paragraph (h)(1) that written notice be provided to FRA no less than 30 calendar days prior to the proposed implementation of such curving speeds on another track segment in accordance with paragraph (f) of this section. This notice is intended to identify the new track segment(s) so that FRA is aware of the proposed operation, can ensure that appropriate permission has been provided for it, and otherwise administer the requirements of this rule.

FRA notes that pursuant to paragraph (i) of this section and § 213.345, Vehicle/track system qualification, dynamic testing is required when moving a vehicle type to a new track segment for operation at cant deficiencies exceeding 5 inches. Accordingly, paragraph (h)(2) makes clear that vehicle types that have been permitted by FRA to operate at cant deficiencies, E_u, greater than 5 inches shall be considered qualified under this section to operate at those permitted cant deficiencies only for the previously operated or identified track segments(s). Please also see the discussion regarding § 213.329(h).

As proposed, paragraph (i) is being added to reference pertinent sections of subpart G—namely, §§ 213.333 and 213.345—that contain requirements related to operations above 5 inches of cant deficiency. These sections include requirements for periodic track geometry measurements, monitoring of carbody acceleration, and vehicle/track system qualification. Specifically, in § 213.333(c)(1), FRA has added periodic inspection requirements using a Track Geometry Measurement System (TGMS) to determine compliance with § 213.53, Track gage; § 213.55(b), Track alinement; § 213.57, Curves; elevation and speed limitations; § 213.63, Track surface; and § 213.65, Combined track alinement and surface deviations. In sharper curves, for which cant deficiency was high but vehicle speeds were reflective of a lower track class, it was found that stricter track geometry limits were necessary, for the same track class, in order to provide an equivalent margin of safety for operations at higher cant deficiency. As proposed in the NPRM, FRA has also added periodic monitoring requirements for cardbody accelerations, to determine compliance with the VTI safety limits in § 213.333. Moreover, the vehicle/track system qualification requirements in § 213.345 apply to vehicle types intended to operate at any curving speed producing more than 5 inches of cant deficiency, and include, as appropriate, a combination of computer simulations, carbody acceleration testing, truck acceleration testing, and wheel/rail force measurements. FRA believes that these requirements are necessary to apply to operations at high cant deficiency on lower-speed track classes. Section 213.369(f) is also referenced, to make clear that inspection records be kept in accordance with the requirements of § 213.333, as appropriate.

Paragraph (j), which was proposed as paragraph (k) in the NPRM, is being added as a new paragraph to define ''vehicle'' and ''vehicle type,'' as used in this section. As the term ''vehicle'' is used elsewhere in this part and has a different meaning than the term ''vehicle type,'' both terms are defined here for the purposes of this section so that this section's requirements may be properly understood and applied.

Section 213.59 Elevation of Curved Track; Runoff

This final rule makes a conforming change to this section's reference to § 213.57(b), to reflect the changes adopted in that section. The need for this conforming change had been overlooked in the proposed rule. However, the AAR notified FRA and other Task Force members of the omission and suggested change during RSAC consideration of the final rule, and no objection was raised. FRA agrees that the language should conform so as to avoid confusion, and has modified paragraph (a) of this section accordingly. No other change is intended.

Section 213.63 Track Surface

Track surface is the evenness or uniformity of track in short distances measured along the running surface of the rails. Under load, the track structure gradually deteriorates due to dynamic and mechanical wear effects of passing trains. Improper drainage, unstable roadbed, inadequate tamping, and deferred maintenance can create surface irregularities, which can lead to serious consequences if ignored.

As proposed in the NPRM, this section is divided into two paragraphs. What was formerly the entirety of this section (the introductory text, table, and footnotes) is re-designated as paragraph (a). Paragraph (a) generally mirrors the former section but substitutes the date ''June 22, 1998'' for the words ''prior to the promulgation of this rule'' in the asterisked portion of the table concerning the variation in crosslevel on spirals due to physical restrictions on spiral length and operating practices and experience as determined by prior engineering decisions. The asterisk was included in the 1998 final rule and refers to that final rule, which was promulgated on June 22, 1998, to address the practice on some railroads to design a greater runoff of elevation in spirals due to physical restrictions on the length of spirals. Spiral runoff in construction after the promulgation of that final rule must be designed and maintained within the generally-applicable limits identified in the table for the difference in crosslevel. Consequently, FRA has clarified this section so that the asterisked text effectively continues to refer to the 1998 final rule—not this very final rule.

The primary substantive change to this section is the addition of new paragraph (b), which contains tighter, single-deviation geometry limits for operations above 5 inches of cant deficiency on curved track. These limits include both 31-foot and 62-foot MCO limits and a new limit for the difference in crosslevel between any two points less than 10 feet apart. FRA believes that adding these track geometry limits is necessary to provide an equivalent margin of safety for operations at higher cant deficiency. These limits are based on the results of simulation studies to determine the safe amplitudes of track geometry surface variations. *See Technical Background,* Section IV.B, above.

FRA did not receive any comment on this section, other than the comment raised by Bombardier and discussed in § 213.14 as to the inclusion of proposed footnote 4 specifying that curved track surface limits apply only when track curvature is greater than 0.25 degree. As noted in the discussion of § 213.14, the text of the proposed footnote has been adopted as § 213.14 primarily to distinguish curved track from tangent track so that track inspectors and automated track geometry measurement systems can properly apply the more stringent track geometry limits required for high cant deficiency operation in track Classes 1 through 5. Should track curvature be less than 0.25 degree, the limits in paragraph (a) apply. Consequently, all of the proposals in this section have effectively been adopted in this final rule without substantive change.

Section 213.65 Combined Track Alinement and Surface Deviations

As proposed in the NPRM, FRA is adding this new section containing limits addressing combined track alinement and surface deviations for operations above 5 inches of cant deficiency on curved track. (In preparing the final rule, FRA added

''track'' to the section heading for consistency with the section headings for § 213.55, Track alinement, and § 213.63, Track surface.) An equation-based safety limit is provided for track alinement and surface deviations occurring in combination within a single chord length of each other. The limits in this section are intended to be used only with a TGMS, and applied on the outside rail in curves.

Although the Track Safety Standards have prescribed limits on geometry variations existing in isolation, FRA has recognized that a combination of track alinement and surface variations, none of which individually amounts to a deviation from the requirements in this part, may nevertheless result in undesirable vehicle response. Moreover, trains operating at high cant deficiencies increase the lateral wheel force exerted on track during curving, thereby decreasing the margin of safety associated with the VTI safety limits in § 213.333. To address these concerns, simulation studies were performed to determine the safe amplitudes of combined track geometry variations. *See Technical Background,* Section IV.B, above. Results of this research showed that the addition of this equation-based safety limit is necessary to provide a margin of safety for vehicle operations at higher cant deficiencies.

One comment was raised on this section following publication of the NPRM. Bombardier commented that the references in the proposed equation identifying variables A_L and S_L should be clarified if the intent is to use the alinement and surface limits in §§ 213.55(a) and 213.63(a), respectively, when operating at cant deficiencies greater than 5 inches in curves not exceeding 0.25 degree. Bombardier noted that, alternatively, if its recommendation to remove the footnote concerning the application of curved track limits in §§ 213.55(b) and 213.63(b) were accepted, this concern would be resolved.

In response to this comment and as a result of Task Force discussions following publication of the NPRM, FRA has added § 213.14 to make clear that limits specified for curved track apply only to track having a curvature greater than 0.25 degree. As discussed in § 213.14, by defining curved track as track having a curvature greater than 0.25 degree, the rule makes clear when the requirements for curved track apply. This section is therefore adopted as proposed without substantive change.

Section 213.110 Gage Restraint Measurement Systems

This section specifies procedures for using a Gage Restraint Measurement System (GRMS) to assess the ability of track to maintain proper gage. As proposed, FRA has amended this section to make it consistent with the changes to the GRMS requirements in § 213.333, the counterpart to this section in subpart G. Specifically, FRA has replaced the former Gage Widening Ratio (GWR) with the Gage Widening Projection (GWP), which is intended to compensate for the weight of the testing vehicle. FRA believes that use of the GWP provides at least the same level of safety, and its inclusion is supported by research results documented in the report titled ''Development of Gage Widening Projection Parameter for the Deployable Gage Restraint Measurement System'' (DOT/FRA/ORD–06/13, October 2006), which is available on FRA's Web site. Moreover, by making the criteria consistent with the changes to the GRMS requirements in § 213.333, a track owner or railroad does not need to modify a GRMS survey to calculate the GWR for track Classes 1 through 5, and then separately calculate the GWP for track Classes 6 through 9. The same GWP formula applies, regardless of the class of track.

In substituting GWP for GWR, FRA has also made a number of conforming changes to this section, principally to ensure that the terminology and references are consistent. These changes are generally more technical than substantive, and they are neither intended to diminish nor add to the requirements of this section. In this regard, as proposed in the NPRM, FRA has corrected the table in paragraph (l) to renumber the remedial action specified for a second level exception. The remedial action should have been designated as (1), (2), and (3) in the ''Remedial action required'' column, consistent with the manner in which remedial action is specified for a first level exception—not designated as footnote 2, (1), and (2). In addition, in preparing the final rule, FRA has reformatted the table to distinguish more clearly between first level and second level exceptions.

FRA has also added footnote 5 to this section, as proposed in the NPRM, stating that ''GRMS equipment using load combinations developing L/V ratios that exceed 0.8 shall be operated with caution to protect against the risk of wheel climb by the test wheelset.'' This footnote is identical in substance to what is now designated as footnote 10 (formerly footnote 7), which applies to § 213.333, Automated vehicle-based inspection systems, thereby promoting conformity between this section and its subpart G counterpart.

Paragraph (e) has been modified from the proposal in the NPRM. In its comments on the NPRM, Bombardier stated that in proposed paragraph (e), it appeared that the formula for the extrapolation factor ''A'' may have been incorrect since the lateral load ''L'' and the vertical load ''V'' were expressed in kips—not pounds. In this regard, Bombardier also suggested changing the proposed text describing the 24,000-pound lateral load and 33,000-pound vertical load to express the loads in kips, for consistency. The Task Force concurred with Bombardier's comments and recommended revising the text and the equation accordingly. FRA agrees and is adopting the recommended changes in the final rule text. FRA is also making a conforming change to this section by modifying the text defining GWP in paragraph (p). Likewise, in § 213.333(i)(2), FRA is modifying the rule so that the units are correspondingly stated in kips.

Subpart G—Train Operations at Track Classes 6 and Higher

Section 213.305 Designation of Qualified Individuals; General Qualifications

This section recognizes that work on or about a track structure supporting high-speed train operations demands the highest awareness of employees of the need to perform their work properly. At the same time, the wording of this section has literally required that each individual designated to perform such work know and understand the requirements of this subpart, detect deviations from those requirements, and prescribe appropriate remedial action to correct or safely compensate for those deviations, regardless whether that knowledge, understanding, and ability with regard to all of subpart G were necessary for that individual to perform his or her duties. For example, knowledge and understanding of specific vehicle qualification and testing requirements may be unnecessary for the performance of a track inspector's duties.

As a result, the Task Force recommended and FRA agrees that this rule clarify that the requirements for a person to be qualified under subpart G concern those portions of this subpart necessary for the performance of that person's duties. This section continues to require that a person designated under it has the knowledge, understanding, and ability necessary to

supervise the restoration and renewal of subpart G track, or to perform inspections of subpart G track, or both, for which he or she is responsible. At the same time, adding the text makes clear that such a designated person is not required to know or understand specific requirements of this subpart not necessary to the fulfillment of that person's duties. FRA does not believe that safety is in any way diminished by these changes, and they were supported by the Task Force. FRA believes that these changes reflect what was intended when this section was established in the 1998 final rule.

Section 213.307 Classes of Track: Operating Speed Limits

The 1998 final rule added subpart G to provide for the operation of trains at progressively higher speeds up to 200 m.p.h. over four separate classes of track—Classes 6 through 9. Standards for the highest-speed track, Class 9 track, for speeds above 160 m.p.h. up to 200 m.p.h., were established looking ahead to the possibility that certain operations would achieve those speeds. In addition, a maximum limit of 160 m.p.h. was established for Class 8 track because trainsets had operated in this country safely up to that speed for periods of several months under waivers for testing and evaluation. *See* 63 FR 34015.

In developing the NPRM, the Task Force recommended that standards for Class 9 track be removed from this subpart and that the maximum allowable speed for Class 8 track be lowered from 160 m.p.h. to 150 m.p.h. Although it was viewed in the 1998 final rule that standards for Class 9 track were useful benchmarks for future planning with respect to vehicle/track interaction, track structure, and inspection requirements, the Task Force noted that operations at speeds in excess of 150 m.p.h. were authorized by FRA only in conjunction with a rule of particular applicability (RPA) addressing the overall safety of the operation as a system, per former footnote 2 of this section. It was thought that the vehicle/track interaction, track structure, and inspection requirements in an RPA would likely be specific to both the operation and the system components used, and track geometry measurement systems, safety criteria, and safety limits might be quite different than currently defined. The Task Force therefore recommended that the safety of operations above 150 m.p.h. be addressed using a system safety approach and regulated through an RPA specific to the intended operation, and that the safety parameters in this subpart for general application to operations above 150 m.p.h. be removed.

Nonetheless, in the NPRM, FRA explained that it had identified the continued need for benchmark standards addressing the highest speeds likely to be achieved by the most forward-looking, high-speed rail projects. And, as a result, FRA and the Volpe Center had conducted additional research and vehicle/track interaction simulations at higher speeds and concluded that Class 9 vehicle/track safety standards can be safely extended to include the highest speeds proposed to date—speeds of up to 220 m.p.h. FRA therefore included these standards in the NPRM. FRA did note its intent to continue its discussions with the Task Force as any comments were addressed following the publication of the NPRM. FRA also noted that the Task Force did not consider a comprehensive revision of all of Subpart G, including those requirements that are not distinguished by class of track. In addition, FRA stated that the Class 9 standards would remain only as benchmark standards with the understanding that the final suitability of track safety standards for operations above 150 m.p.h. would be determined by FRA only after examination of the entire operating system, including the subject equipment, track structure, and other system attributes. FRA explained that direct FRA approval is required for any such high-speed rail operation, whether through an RPA or another regulatory proceeding.

As a separate matter, FRA noted that the rule would require the testing and evaluation of equipment for qualification purposes at a speed of 5 m.p.h. above the maximum intended operating speed, in accordance with § 213.345, and that, for example, this would require equipment intended to operate at Class 8 track's maximum speed of 160 m.p.h. to be tested at 165 m.p.h. Therefore, FRA made clear that operating at speeds up to 165 m.p.h. for vehicle qualification purposes under this subpart would necessarily be permitted to continue on Class 8 track, subject to the requirements for the planning and safe conduct of such test operations. These test operations are distinct from service operations on Class 8 track that would be limited to a maximum speed of 160 m.p.h.

Finally, FRA proposed to slightly modify the section heading so that it reads ''Classes of track: operating speed limits,'' using the plural form of ''class.'' This change is intended to make the section heading consistent with the heading for § 213.9, the counterpart to this section for lower-speed track classes.

In its comments on the NPRM, Bombardier raised concern that FRA had not adopted the recommendation of the Task Force to remove standards for Class 9 track and reduce the maximum operating speed for Class 8 track to 150 m.p.h. In particular, Bombardier raised concern that FRA conducted research without the involvement of the Task Force, and that one of the principles used by the Task Force for evaluating any changes to the track geometry standards at high speed or high cant deficiency was to use representative vehicles that had actually been designed and qualified for such operations. Bombardier believed that the use of the Acela power car to determine track geometry standards for Class 9 track, by conducting simulations at 220 m.p.h. and 9 inches of cant deficiency, was inappropriate since the equipment was designed and qualified for operation at 150 m.p.h. Bombardier added that appropriate track geometry safety limits for speeds up to 220 m.p.h. can only be developed with a vehicle model that has been validated up to that speed, and that track standards developed based on an invalidated vehicle model could deter the implementation of some high-speed rail systems and provide a false sense of security.

Bombardier also noted that it was unsure what the term ''benchmark standard'' entails in a regulation and requested that FRA clarify this issue. Bombardier also asked for clarification as to FRA's statement that direct FRA approval is required for any such high-speed operation, whether through an RPA or another regulatory proceeding. Bombardier asked what other regulatory proceeding can be used, and noted that former footnote 2 indicated only an RPA proceeding. Bombardier reiterated the Task Force recommendation to eliminate track Class 9 requirements in all sections and to limit track Class 8 speeds to 150 m.p.h. Bombardier stated that safety standards for speeds above 150 m.p.h. should be contained in an RPA and be based on the maximum operating speed and specific equipment and track characteristics for the proposed high-speed rail system.

FDOT also commented on this section, and referenced the high-speed rail project then-planned for top speeds of 168 m.p.h. between Tampa and Orlando, and 186 m.p.h. between Orlando and Miami, Florida. FDOT understood that because the maximum operating speed would be above 150 m.p.h., the system would be regulated through an RPA that would be specific to the particular operation and

technology selected for this application. In this light, based on FRA's discussion in the NPRM and the need for FRA to ascertain the suitability of Class 9 standards for each proposed high-speed rail operation, it wasn't clear to FDOT whether the benchmark standards would prove beneficial or a deterrent to implementing high-speed rail in the United States. Noting FRA's intent to continue discussion with the Task Force, FDOT encouraged FRA and the Task Force to resolve any differences on this issue and to assure that the final rule will be compatible with the proven high-speed rail technologies and systems that will be contemplated for the high-speed rail systems planned in Florida and elsewhere in the United States. FDOT added that a final rule governing the operation of a high-speed rail system must be based on a systems approach that includes the characteristics of both the infrastructure and rolling stock. Consequently, to ensure compatibility of the various aspects of the system, the governing regulation should include requirements for such components as ballast and crossties, according to FDOT, and either be addressed in the Track Safety Standards or included in the governing RPA. FDOT expected that these requirements would be based on experience with proven high-speed rail systems around the world and with rolling stock compatible with ''Tier V'' operations, as defined in FRA's High-Speed Passenger Rail Safety Strategy.

Referencing FRA's mention in the NPRM of ''flying ballast'' as a potential issue for high-speed rail operations, FDOT also commented that slab track (ballastless track) is a modern form of track construction that has been used successfully throughout the world on various high-speed rail lines and would be considered as an option for the system then-planned in Florida. FDOT stated that this construction method not only addresses the flying ballast safety concern raised by FRA, it also brings several construction advantages and long-term performance benefits. Consequently, FDOT believed that any regulation governing high-speed rail operation should address the use of slab track. However, FDOT noted that it was not clear how this would be addressed by the NPRM, in that it appeared that the track geometry measurement systems, safety criteria, and inspection requirements contained in the NPRM were based on significant experience and simulations using ballasted track (and FRA-compliant Tier I and Tier II passenger equipment, in accordance with 49 CFR part 238). FDOT stated that it is well known that allowable track geometry defects determined by simulation are highly dependent on both vehicle suspension and track stiffness characteristics and that, as such, the suitability of the safety geometry limits contained in the NPRM for high-speed equipment operating over slab track is very questionable, adding that the inspection and maintenance requirements for slab track are very different from those that are required for ballasted track. FDOT encouraged FRA to address this issue in the final rule or to clarify that the final rule only governs ballasted track. And, should the latter be the case, there would be a further need to regulate all vehicle/track interaction issues where slab track is used through an RPA.

The issues of the maximum speed limit for Class 8 track and standards for Class 9 track were the subject of much discussion within the Task Force. Ultimately, the Task Force concurred with FRA's proposal in the NPRM to maintain Class 8 track's maximum speed at 160 m.p.h., retain Class 9 track standards, and increase Class 9 track's maximum speed to 220 m.p.h. At the same time, the Task Force also concurred with revising footnote 2 of this section. As revised, footnote 2 provides that operating speeds in excess of 125 m.p.h. are authorized by this part only in conjunction with FRA regulatory approval addressing other safety issues presented by the railroad system. In addition, footnote 2 also provides that for operations on a dedicated right-of-way, FRA's regulatory approval may allow for the use of inspection and maintenance criteria and procedures in the alternative to those contained in this subpart, based upon a showing that at least an equivalent level of safety is provided.

The underlying purpose of footnote 2 is to indicate that compliance alone with the Track Safety Standards does not authorize operations at high speeds; other safety issues must be addressed in their own right for each high-speed rail system as elements of a comprehensive, system-safety-based regulatory approval and compliance program. While the reference in former footnote 2 to an RPA for regulating high-speed operations was appropriate when the Track Safety Standards were amended in 1998, based on subsequent developments, footnote 2 should more appropriately state that high-speed operations are subject to FRA regulatory approval. It is no longer necessary to specify that FRA regulatory approval be provided through an RPA. Likewise, this footnote should refer to high-speed rail operations as operations conducted at speeds above 125 m.p.h.—not 150 m.p.h. Footnote 2 of this section was added together with the rest of subpart G to the Track Safety Standards in 1998—the year following FRA's issuance of a proposed RPA to establish safety standards for the Florida Overland eXpress (FOX) high-speed rail system. *See* 62 FR 65478, December 12, 1997. (The FOX rulemaking was terminated after the State of Florida withdrew financial support for the project, *see* 65 FR 50952, August 22, 2000.) Moreover, subpart G preceded the issuance of the Passenger Equipment Safety Standards in 1999, which require FRA regulatory approval for the operation of Tier II passenger equipment, i.e., passenger equipment operating at speeds above 125 m.p.h. and not exceeding 150 m.p.h. *See, generally,* 49 CFR 238.111(b) and 238.501, *et seq.* Amtrak's Acela operates at these Tier II speeds, and it has done so for over a decade through FRA approval. In this regard, FRA makes clear that the revisions to this footnote neither impose any new requirement on Acela, nor alter any aspect of FRA's regulatory approval of Acela.

Further, this very rulemaking on vehicle/track interaction was initiated before a more recent effort by FRA to consider and develop standards for the safe operation of another tier of high-speed rail service. That work is being carried out through the Engineering Task Force of the same RSAC Passenger Safety Working Group that has overseen the Vehicle/Track Interaction Task Force. FRA requested that the Engineering Task Force develop safety recommendations for the operation of passenger rail equipment at speeds up to 220 m.p.h., focusing on a new tier of passenger equipment safety standards in part 238: Tier III, which is predicated on passenger equipment operating in an exclusive right-of-way at speeds over 125 m.p.h., and in a shared right-of-way only at speeds not exceeding 125 m.p.h. This new tier of safety standards is intended to facilitate the nationwide deployment of a high-speed rail network, both maximizing the benefits inherent in dedicated high-speed rail operation while minimizing the costs involved by allowing for the sharing of infrastructure. These standards will expand FRA's overall regulatory framework for high-speed passenger rail safety, complementing FRA's existing standards for Tier II high-speed rail operations on shared rights-of-way. FRA has also been examining, with the assistance of RSAC, requirements for passenger railroad system safety planning that would further address safety issues in a comprehensive way,

and has issued a proposed rule to require commuter and intercity passenger railroads to develop and implement system safety programs (*see* 77 FR 55371; Sept. 7, 2012).

As noted, the Task Force concurred with the NPRM proposal to maintain Class 8 track's maximum speed at 160 m.p.h., retain Class 9 track standards, and increase Class 9 track's maximum speed to 220 m.p.h. Each of FRA's track classes is essentially based on the same foundation, with a set of progressively stricter safety limits as operating speeds increase. While standards for Class 9 track are the strictest, they follow the same fundamental approach as for the lowest-speed class of track, which is essential to support the operation of different types of rail service on the same track. Class 8 track speeds up to 160 m.p.h. have been validated not only through computer modeling, but also through actual testing and experience. FRA believes that retaining the 160-m.p.h. maximum speed is safe for supporting rail operations at that speed, given the requirements associated with Class 8 track speeds. Although FRA's passenger equipment safety standards in part 238 currently do not provide standards for operations above 150 m.p.h., FRA has been engaged in developing new Tier III high-speed safety standards for operations up to 220 m.p.h., as discussed above. FRA is also reexamining the current Tier II maximum speed of 150 m.p.h., which was established in 1999, with a view to safely extending that speed to permit higher-speed Tier II operations.

In retaining Class 9 track standards and extending the maximum speed to 220 m.p.h., footnote 2 now provides that for operations above 125 m.p.h. on a dedicated right-of-way, FRA's regulatory approval may allow for the use of inspection and maintenance criteria and procedures in the alternative to those contained in this subpart, based upon a showing that at least an equivalent level of safety is provided. This addition helps to place in clearer perspective what FRA intended by describing Class 9 track standards as ''benchmark'' standards in the NPRM, acknowledging the unique system attributes inherent in a dedicated right-of-way. Indeed, for this reason, the provision applies to Class 8 track in a dedicated right-of-way as well, allowing for FRA approval of alternative criteria and procedures that are appropriate and safe in such a defined operating environment. Moreover, together with the development of Tier III standards in Part 238, this provision is intended to harmonize the regulation of high-speed rail operations on dedicated rights-of-way—facilitating innovation and efficiency, while protecting safety.

In addition, FRA intends to examine, with the assistance of RSAC members, those requirements of subpart G that it has not addressed in this rulemaking on vehicle/track interaction safety. FRA recognizes that while this rulemaking makes substantial revisions to the high-speed track standards in subpart G, it was not intended to result in a comprehensive revision of these standards. In this regard, FRA has noted that requirements in subpart G that are not distinguished by class of track, such as ballast, merit examination, which was amplified by FDOT in its comments concerning ballastless track. FRA is therefore interested in undertaking a future effort with the assistance of RSAC to consider revisions to subpart G not addressed in this rulemaking.

As a final matter, at the recommendation of the AAR, footnote 1 is being modified. Footnote 1 provides conditions under which freight may be transported at passenger train speeds. The second clause of footnote 1 references passenger locomotive axle loadings utilized in passenger service along with the freight. This clause is modified by adding the words ''if any'' after the reference to passenger service, to make clear that there need not be any passenger service on the same line with the freight service.

Section 213.313 Application of Requirements to Curved Track

This is a new section that is being added to help define the application of requirements for curved track, following publication of and comment on the NPRM. Please see the discussion of § 213.14, which is identical to this section. At the recommendation of Task Force members, FRA is restating this section in subpart G to make clear that it applies together with the other provisions in this subpart. Subpart G is intended to function as its own set of regulations governing any track identified as belonging to one of its (higher) track classes, and this section's addition is consistent with the comprehensiveness of this subpart.

Section 213.323 Track Gage

This section contains the minimum and maximum limits for gage, including limits for the change in gage within any 31-foot distance. As proposed in the NPRM, for Class 6 track FRA is modifying the limit for the change in gage within any 31-foot distance from ½ inch to ¾ inch. During Task Force discussions in developing the NPRM, Amtrak had raised concern that for track constructed with wooden ties and cut spikes, the ½-inch variation in gage limit was difficult to maintain. Tolerance values for the rail base, tie plate shoulders, and spikes can result in a ½-inch gage variation in track constructed with wooden ties, particularly due to daily temperature fluctuations of rail and associated heat-induced stresses. In response to Amtrak's concern, FRA conducted modeling of track with variations in gage up to ¾ inch in 31-foot distances and found no safety concerns for the equipment modeled. Modeling was also conducted using 20 miles of actual measured track geometry with these variations in gage for speeds up to 115 m.p.h. without showing safety concerns for the equipment modeled. As a result, FRA believes that modifying this limit for the change of gage for Class 6 track, which has a maximum permitted speed of 110 m.p.h., will not diminish safety and reduces the burden on the track owner or railroad to maintain safe gage.

FRA notes that during Task Force consideration of the draft final rule, concern was raised by the AAR and Amtrak as to the application of the ½-inch limit for the change in gage within any 31-foot distance in Class 7 through 9 track. They suggested that clarification be provided to exclude up to a ¼-inch, designed widening of the gage at switch point locations to enable the stock rail and the switch point to fit smoothly together. FRA believes that such an exclusion could have safety implications in these high-speed track classes, especially should the switch point geometry be poorly maintained, and that the need for such an exclusion would potentially arise only in very limited circumstances in these track classes, as perhaps when an emergency repair is made in a switch using wooden ties in place of concrete ties. Nonetheless, FRA agrees that an appropriate safety determination could be made upon inspection of the rail head profile at the local points of concern, and in applying the requirements will give consideration to design modifications that are made for the purpose of ensuring the proper functioning of switches where adjacent gage change occurs within 31 feet of the switch point. FRA will include such guidance in its Track Safety Standards Compliance Manual, which is available on FRA's Web site, as part of its overall revision of the Manual to reflect the changes made in this final rule.

No other issue was raised on this section, other than the general comment from Bombardier on the propriety of retaining Class 9 track standards. FRA has addressed Bombardier's comment in the general discussion of Class 9 track

standards in § 213.307. Consequently, FRA is adopting the rule text as proposed.

Section 213.327 Track Alinement

This section is the subpart G counterpart to § 213.55 and is intended for higher-speed track classes—Classes 6 through 9. As proposed, the section heading is being modified so that it reads ''Track alinement,'' instead of ''Alinement,'' for clarity.

Paragraph (a) remains substantively unchanged, as proposed in the NPRM.

FRA is revising the single-deviation, track alinement limits in paragraph (b) so as to distinguish between limits for tangent and curved track. Specifically, the 62-foot MCO limit for Class 6 curved track has been narrowed to ⅝ inch, while the tangent track limit remains at the value of ¾ inch. This change is intended to provide consistency between the track alinement limits for track Classes 5 and 6, as the Class 5 limit for curved track in § 213.55 is ⅝ inch. The 62-foot MCO limits for Class 7 and Class 8 tangent track have been increased to ¾ inch, while the curved track limits remain at the value of ½ inch. Further, the 124-foot MCO limit for Class 8 tangent track has been increased to 1 inch, while the curved track limit remains at the value of ¾ inch. These changes are also based on the results of the simulation studies for determining safe amplitudes of track geometry alinement variations. *See Technical Background,* Section IV.B, above.

FRA is reformatting the table in paragraph (b) from that proposed in the NPRM. The AAR commented that the table in proposed paragraph (b) was missing a number of deviation limits for curved track that had been recommended by the Task Force. FRA believes that these limits were not clearly identified in the NPRM, and therefore appeared to have been omitted, due to the way the table was formatted for publication in the **Federal Register**. Consequently, the table is being revised to ensure that these values are properly displayed.

The former text of paragraph (c) has been moved to a new paragraph (d). In revised paragraph (c) FRA has added tighter, single-deviation geometry limits for operations above 5 inches of cant deficiency. These additions include 31-foot, 62-foot, and 124-foot MCO limits. The track geometry limits in revised paragraph (c) are based on the results of simulation studies to determine the safe amplitudes of track geometry alinement variations, discussed in Section IV.B above, which describes in particular the 124-foot MCO limit for Class 7 track. FRA believes that adding these track geometry limits is necessary to provide an equivalent margin of safety for operations at higher cant deficiency.

FRA notes that Bombardier raised the same comment on this section as for other sections concerning the inclusion of proposed footnote 1 in paragraphs (b) and (c), specifying that curved track alinement limits apply only when track curvature is greater than 0.25 degree. In response to this comment and as a result of Task Force discussions following publication of the NPRM, FRA has added § 213.313 to make clear that limits specified for curved track apply only to track having a curvature greater than 0.25 degree, in lieu of adopting proposed footnote 1. By defining curved track as track having a curvature greater than 0.25 degree, the rule makes clear when the requirements for curved track apply.

As noted, the text of former paragraph (c) has been moved to new paragraph (d) and remains substantively unchanged.

FRA is adding new paragraph (e) to this section, as proposed. Paragraph (e) is an adaptation of footnotes 1 and 2 from § 213.55, and describes the ends of the chord and the line rail for purposes of complying with this section. Paragraph (e) applies to all of the requirements in this section and is consistent with current practice.

No other comment was received on this section, other than the general comment from Bombardier on the propriety of retaining Class 9 track standards. FRA has addressed Bombardier's comment in the general discussion of Class 9 track standards in § 213.307. Consequently, FRA adopts this section as proposed, with paragraph (b) reformatted and curved track defined in new § 213.313.

Section 213.329 Curves; Elevation and Speed Limitations

Determining the maximum speed that a vehicle may safely operate around a curve is based on the degree of track curvature, actual elevation, and amount of unbalanced elevation, where the actual elevation and curvature are derived by a moving average technique. This approach, as codified in this section, is as valid in the high-speed regime as it is in the lower-speed track classes, and § 213.57 is the counterpart to this section for track Classes 1 through 5. As in § 213.57, FRA has substantially revised this section, including both modifying and clarifying the qualification requirements and approval process for vehicles intended to operate at more than 3 inches of cant deficiency.

Paragraph (a) formerly provided that the maximum crosslevel on the outside rail of a curve may not be more than 7 inches. As proposed, this provision is being restated to provide that the maximum elevation of the outside rail of a curve may not be more than 7 inches. Crosslevel is a function of elevation differences between two rails, and is the focus of other provisions of this final rule, specifically § 213.331, Track surface. The clarification here is intended to limit the elevation of a single rail.

FRA is also revising the second requirement of paragraph (a), consistent with the revision to § 213.57(a). In the NPRM, FRA noted that the Task Force recommended moving to § 213.331 the second requirement of paragraph (a), which formerly provided that ''[t]he outside rail of a curve may not be more than ½ inch lower than the inside rail.'' Instead, FRA proposed that this requirement be re-written more clearly to restrict configuring track so that the outside rail of a curve is designed to be lower than the inside rail, while allowing for a deviation of up to ½ inch as provided in § 213.331, which also included a proposed limit for reverse crosslevel deviation. FRA explained in the NPRM that this requirement in paragraph (a) was intended to restrict configuring track so that the outside rail of a curve is lower than the inside rail, while the limits at issue in § 213.331 govern local deviations from uniform elevation—from the designed elevation—that occur as a result of changes in conditions. Rather than conflict, FRA stated these provisions complement each other, addressing both the designed layout of a curve and the deviations from that layout that result from actual use and wear.

The AAR commented on FRA's proposal to revise the second requirement of paragraph (a), stating that such a sweeping prohibition against the outside rail being lower than the inside rail is inappropriate. The AAR explained that turnouts off of gradual curves can have small reverse superelevation by design, even for track where speeds over 90 m.p.h. are permitted. The AAR also noted that the Task Force had recommended eliminating this requirement from paragraph (a), and that, if FRA were unwilling to adopt that recommendation, then the original language should be retained.

FRA has modified this provision to state that the outside rail of a curve may not be lower than the inside rail by design, except when engineered to address specific track or operating conditions, and that the limits in

§ 213.331 apply in all cases. FRA continues to believe that the former rule text could give the mistaken impression that it is appropriate to design reverse elevation into curves as the nominal condition for all curves. Nonetheless, FRA appreciates from the comments raised that reverse elevation is designed into certain curves both out of necessity and for safety reasons. FRA did not intend its proposal to nullify such engineering design—engineering design of which the track owner and railroad are aware in carrying out railroad operations and responsibilities safely. As modified, the rule text addresses both the concerns raised by FRA and those raised in the comments, and the Task Force concurred with this revision.

As explained in the discussion of specific comments and conclusions section of the preamble, above, what was proposed as paragraph (b) is not included in this final rule. Please see *Wheel Unloading from Wind on Superelevated Curves,* Section V.B., for a full explanation of FRA's treatment of that proposal. Rather, what was proposed as paragraph (c) is designated as paragraph (b).

As proposed, in paragraph (b) the V_{max} formula determines the maximum allowable posted timetable operating speed for curved track based on the qualified cant deficiency (inches of unbalance), E_u, for the vehicle type. This paragraph also references a new footnote 7 to permit the vehicle type to operate at the qualified cant deficiency for which it is approved, E_u, plus ½ inch, if actual elevation of the outside rail, E_a, and degree of track curvature, D, change as a result of track degradation. This paragraph is intended to provide a tolerance to account for the effects of local crosslevel or curvature conditions on V_{max} that may result in the operating cant deficiency exceeding that approved for the equipment, i.e, the actual operating speed may exceed the maximum allowable posted timetable operating speed. Without this tolerance, these track conditions could generate a limiting speed exception, and some railroads have adopted the approach of reducing the operating cant deficiency of the vehicle in order to avoid these exceptions. FRA believes that this ½ inch tolerance is supported by operational experience and complemented by related standards acting to mitigate safety concerns. For instance, the V_{max} formula is not intended to replace FRA's track geometry limits, which more clearly focus on individual track irregularities with shorter wavelengths. These track geometry limits apply independently and act independently to limit the maximum allowable speed for a track segment based on the condition of the track.

In addition, as proposed, former footnote 4 is being redesignated as footnote 6, and a statement within the former footnote is being removed regarding the application of the V_{max} equation to the spirals on both ends of the curve if E_u exceeds 4 inches. The V_{max} equation is intended to be applied in the body of the curve where the cant deficiency is the greatest, and the actual elevation and degree of curvature are determined according to the moving average techniques defined in footnote 6, as well as in footnote 8, discussed below. Within spirals, where the degree of curvature and elevation are changing continuously, local deviations from uniform elevation and degree of curvature are governed by the limits in § 213.327 and § 213.331.

Former footnote 5 is being redesignated as footnote 8 without substantive change.

Paragraph (c), which was proposed as paragraph (d) in the NPRM, provides that all vehicle types are considered to be qualified for up to 3 inches of cant deficiency, as allowed since the 1998 Track Safety Standards final rule.

Paragraph (d), which was proposed as paragraph (e) in the NPRM, is being modified to specify the requirements for vehicle qualification over track with more than 3 inches of cant deficiency in track Classes 6 through 9. This paragraph formerly specified two sets of static lean test requirements for vehicle qualification for more than 3 inches of cant deficiency. The first set of requirements limited both the vertical wheel load remaining on the raised wheels to no less than 60 percent of their static level values and the roll of a passenger carbody to 5.7 degrees with respect to the horizontal, for a vehicle standing on superelevation equal to the proposed cant deficiency. The second set of requirements addressed potential roll-over and passenger safety issues should a vehicle be stopped or traveling at very low speed on a curve with 7 inches of superelevation, by limiting both the vertical wheel load remaining on the raised wheels to no less than 60 percent of their static level values and the roll of a passenger carbody to 8.6 degrees with respect to the horizontal. In the final rule, the revised requirements, consistent with the revised standards in § 213.57 (for lower-speed track classes), limit both the vertical wheel load remaining on the raised wheels to no less than 60 percent of their static level values and carbody roll for passenger cars to no more than 8.6 degrees with respect to the horizontal when the vehicle is standing (stationary) on track with a uniform superelevation equal to the proposed cant deficiency. Consequently, the rule no longer imposes a 7-inch superelevation static lean requirement generally; rather, the amount of superelevation is dependent on the proposed cant deficiency. For example, if the proposed cant deficiency is 6 inches, the superelevation used for demonstrating compliance with this paragraph is also 6 inches.

The requirements in paragraph (d) may be met by either static or dynamic testing, and are consistent with the requirements in § 213.57. As in § 213.57, the vehicle type must be tested in a ready-for service condition. In consultation with the Task Force, FRA is clarifying that the vehicle type be tested in a ready-for-service condition, i.e., in the same vehicle/track performance condition in which it would be in passenger service. At the same time, FRA is clarifying paragraph (e), below, so that the load condition under which testing is performed is included in the description of the test procedure. For example, the vehicle type may or may not be loaded to simulate passengers on board, and this information would be necessary for a complete evaluation of the vehicle's performance.

As noted, the static lean test limits the vertical wheel load remaining on the raised wheels to no less than 60 percent of their static level values and limits the roll of a passenger carbody to 8.6 degrees with respect to the horizontal, when the vehicle is standing on track with superelevation equal to the proposed cant deficiency. The dynamic test limits the steady-state vertical wheel load remaining on the low rail wheels to no less than 60 percent of their static level values and limits the lateral acceleration in a passenger car to 0.15g steady-state, when the vehicle operates through a curve at the proposed cant deficiency. This 0.15g steady-state lateral acceleration limit in the dynamic test is consistent with the 8.6-degree roll limit in the static lean test, in that it corresponds to the lateral acceleration a passenger would experience in a standing (stationary) vehicle whose carbody is at a roll angle of 8.6 degrees with respect to the horizontal. The former 5.7-degree roll limit, which limited steady-state, carbody lateral acceleration to 0.1g, has been removed.

FRA notes that the less stringent steady-state, carbody lateral acceleration limit and carbody roll angle limit adopted in this final rule will minimize both the need to equip vehicles with tilt

systems at higher cant deficiencies and the costs associated with such features, as well. Moreover, by facilitating higher cant deficiency operations, savings may also result from shortened trip times. These savings may be particularly beneficial to passenger operations in emerging high-speed rail corridors, enabling faster operations through curves.

Of course, any such savings should not come at the expense of safety, and FRA is adopting additional track geometry requirements for operations above 5 inches of cant deficiency, whether or not the vehicles are equipped with tilt systems. These additional track geometry requirements were developed to control for undesirable vehicle response to track conditions that could pose derailment concerns. Nonetheless, the VTI limits on transient accelerations may need to be stricter when combined with higher steady-state lateral acceleration, to address passenger ride safety concerns. Additional research on passenger response to vibration is necessary to establish this relationship and model this effect. While the tighter geometry limits at high cant deficiency that have been added in this final rule were not specifically developed to address such concerns, they may help to control transient, carbody acceleration events that could pose ride safety concerns for passengers subjected to higher steady-state lateral accelerations. These additional track geometry requirements apply only to operations above 5 inches of cant deficiency, where steady-state, carbody lateral acceleration may approach 0.15g for typical vehicle designs. FRA does note that higher cant deficiencies are necessary to support high-speed operations on curved track, and, as a result, the additional track geometry requirements contained in this final rule for such high cant deficiency operations are likely to be implicated. Moreover, FRA is not aware of any general safety issue involving passengers losing their balance and falling due to excessive steady-state, carbody lateral accelerations in current operations.

Yet, as explained in the discussion of § 213.57(d), FRA is concerned in particular about the effect transient, carbody lateral acceleration events that pose no derailment safety concerns may nonetheless have on passenger ride safety when combined with increased steady-state, carbody lateral acceleration forces. Consequently, to fully inform FRA's decisions in preparing this final rule, FRA specifically invited public comment on the proposal to set the steady-state, carbody lateral acceleration limit at 0.15g. FRA requested specific comment on whether the proposed rule would appropriately provide for passenger ride safety, and if not, requested that the commenters state what additional requirement(s) should be imposed, if any.

As noted above, in commenting on the NPRM, SNCF agreed that the limit of 0.15g for steady-state, carbody lateral acceleration is justified in that this value is usually considered a comfort limit for curve design and is the limit value accepted for passenger cars. SNCF specifically commented that, in European rules, the 0.15g value corresponds to an exceptional value of cant deficiency, while the recommended value is about 0.14g. FRA sees no conflict with these comments; measurements and supplemental research have indicated that a steady-state, carbody lateral acceleration limit of 0.15g is considered to be the maximum, steady-state lateral acceleration above which jolts from vehicle dynamic response to track deviations can present a hazard to passenger safety. FRA has therefore adopted the proposal in the final rule.

The changes to this section also separate and clarify the submittal requirements to FRA to obtain approval for the qualifying cant deficiency of a vehicle type (paragraph (e)), and to notify FRA prior to the implementation of the approved higher curving speeds (paragraph (f)). As discussed above, FRA is clarifying paragraph (e) so that the load condition under which the testing was performed is included in the description of the test procedure. Additional clarification in paragraph (e) has been included for submitting suspension system maintenance information. This requirement for submitting suspension system maintenance information applies to vehicle types not subject to parts 238 or 229 of this chapter, such as a freight car operated in a freight train, and then only to safety-critical components. Paragraph (f) also clarifies that in approving the request made pursuant to paragraph (e), FRA may impose conditions necessary for safely operating at the higher curving speeds.

FRA notes that former footnote 6 is being redesignated as footnote 9 and modified in conformance with the changes in this final rule. The former footnote offered an example test procedure providing measurements for up to 6 inches of cant deficiency and 7 inches of cant excess. This footnote has been modified to reference testing at ''the proposed cant deficiency,'' rather than a specific condition, consistent with the requirements of this section. The cant-excess requirement has also been addressed, as explained above. In addition, FRA notes that it has removed the statement in the former footnote that the ''test procedure may be conducted in a test facility.'' Testing may of course be conducted in a test facility, but the statement could cause confusion that testing may be conducted only in a test facility. No such limitation is intended.

Former paragraph (f) is being moved to new paragraph (g), which was proposed as paragraph (h) in the NPRM. As noted, paragraph (g) is identical to two other provisions in this final rule: § 213.57(g)—the counterpart to this section for lower-speed track classes—and § 213.345(i). The Task Force agreed that the purpose of these paragraphs is the same and recommended that the same text be included. FRA agreed and has modified the rule accordingly. Please see the discussion of § 213.345(i), below.

As discussed in § 213.57(h), paragraph (h) was proposed to be added as paragraph (i) to clarify that vehicle types that have been permitted by FRA to operate at cant deficiencies, E_u, greater than 3 inches prior to the publication of this final rule in the **Federal Register** would be considered qualified under this section to operate at those permitted cant deficiencies over the previously-operated track segments(s). Consequently, before the vehicle type could operate over another track segment at such cant deficiencies, FRA proposed that the vehicle type be qualified as provided in this section.

In commenting on the NPRM, Amtrak stated that this proposal implicated issues associated with vehicle qualification, and Amtrak referenced its comments concerning proposed § 213.345(b) and (d). Moreover, Amtrak stated that the tests proposed in this section, as in § 213.57 for lower-speed track classes, would be even more wasteful because, unlike the tests proposed for § 213.345, the tests proposed here would not have been conducted under ''local'' conditions but rather in a static testing facility having no connection to the location of the proposed service. Amtrak therefore wondered what types of conditions FRA believed would be uncovered during this testing process before permitting the vehicle types to operate at the same cant deficiencies on other track segments. Amtrak believed that it would be simply repeating the exact same test on the exact same car at the exact same test facility, and therefore found it difficult to find any justification for the proposed limitation.

As noted, FRA discussed the proposal and the comments received with the

Task Force. The Task Force recommended that vehicle types that have been permitted by FRA to operate at cant deficiencies, E_u, greater than 3 inches but not exceeding 5 inches be considered qualified under this section to operate at those permitted cant deficiencies over all track segments—not only over previously operated segments. As adopted in paragraph (h)(1), FRA agrees that extending the nature of the qualification in this way is appropriate for operations on Class 6 track given that the requirements of this paragraph are static or steady-state and do not directly reflect the ''local'' interaction of the vehicle and the track. Further, FRA makes clear that the provision applies not only to previous permission by FRA to operate at these cant deficiencies, but also prospectively to vehicle types when they are approved by FRA to operate at these cant deficiencies. Nonetheless, a requirement has been included in paragraph (h)(1) that written notice be provided to FRA no less than 30 calendar days prior to the proposed implementation of such curving speeds on another track segment in accordance with paragraph (f) of this section. This notice is intended to identify the new track segment(s) so that FRA is aware of the proposed operation, can ensure that appropriate permission has been provided for it, and otherwise administer the requirements of this rule.

However, FRA does note that pursuant to § 213.345, Vehicle/track system qualification, dynamic testing is required when moving a vehicle type to a new track segment for operation at cant deficiencies greater than 5 inches on Class 6 track, or greater than 3 inches on Class 7 through 9 track, to reflect the ''local'' interaction of the vehicle and the track over which it operates as a system. Accordingly, paragraph (h)(2) makes clear that vehicle types that have been permitted by FRA to operate at cant deficiencies, E_u, greater than 5 inches on Class 6 track, or greater than 3 inches on Class 7 through 9 track, shall be considered qualified under this section to operate at those permitted cant deficiencies only for the previously operated or identified track segments(s). Operation of these vehicle types at such cant deficiencies and track class on any other track segment is permitted only in accordance with the qualification requirements in this subpart.

Paragraph (i), proposed as paragraph (j), is a new paragraph for defining the terms ''vehicle'' and ''vehicle type,'' as used in this section and in §§ 213.333 and 213.345. As the term ''vehicle'' is used elsewhere in this subpart and has a different meaning than the term ''vehicle type,'' both terms are defined here for the purposes of these sections so that these sections' requirements may be properly understood and applied. These terms have the same meaning as in § 213.57(j).

Section 213.331 Track Surface

This section is the subpart G counterpart to § 213.63 and is intended for higher-speed track classes.

As proposed in the NPRM, FRA is making three changes to the single-deviation, track surface limits in paragraph (a). Specifically, the 124-foot MCO limit for Class 9 track has been reduced to 1 inch, based on a review of simulation results of Acela equipment performance. Further, the limit for the difference in crosslevel between any two points less than 62 feet apart has been reduced to 1¼ inches for Class 8 track, and 1 inch for Class 9 track. These two changes are intended to provide more consistent safety limits and are based on simulation studies conducted for short warp conditions.

In addition, three new limits are being added to the single-deviation, track surface limits in paragraph (a). Two of these limits (deviation from zero crosslevel on tangent track, and reverse elevation for curved track), although not explicitly stated in the table in former paragraph (a), have effectively been applicable to track Classes 6 through 9 because these higher-speed track classes must at least meet the minimum geometry requirements for the lower-speed track classes. Specifically, the 1-inch limit for deviation from zero crosslevel on tangent Class 5 track, as specified in § 213.63, is being added as a limit for track Classes 6 through 9. Second, the ½-inch reverse elevation limit for curved track, as formerly specified in § 213.329(a), is being moved to this paragraph (a). The third limit, a new limit for the difference in crosslevel between any two points less than 10 feet apart (short warp), is being added to paragraph (a) as well. FRA noted in the NPRM that the Task Force proposed that the existing 1-inch runoff limit for Class 5 track, as specified in § 213.63, be added for higher track classes. However, FRA believes that appropriate surface requirements have already been established in § 213.331 that address this runoff condition, and thus FRA believes it would be duplicative to include this 1-inch runoff limit separately in the text of this paragraph.

In its comments on this section, the AAR raised concern with the proposed addition in paragraph (a) of a new restriction on the deviation from zero crosslevel on tangent track. The AAR noted that the proposed requirement parallels an existing entry in the corresponding table in § 213.63 for the lower-speed track classes but that there is a proviso contained in § 213.59(b) that makes allowances for elevation runoff in curves. Specifically, the proviso in § 213.59(b) states: ''If physical conditions do not permit a spiral long enough to accommodate the minimum length of runoff, part of the runoff may be on tangent track.'' The AAR believed that the proposed restriction on the deviation from zero crosslevel on tangent track needed a similar proviso, and recommended including the same text in this paragraph. Amtrak likewise raised this concern and made the same suggestion. The Task Force concurred with these commenters, recognizing that the additional text applies to the comparable provision for the lower-speed classes of track. FRA agrees and has included the text as footnote 2 to this section. Footnote numbering has been modified appropriately to reflect the addition of this new footnote 2.

As proposed, FRA is also adding tighter geometry limits for operations above 5 inches of cant deficiency in revised paragraph (b). These include 124-foot MCO limits and a new limit for the difference in crosslevel between any two points less than 10 feet apart (short warp). The text of former paragraph (b) is being moved to new paragraph (c). FRA believes that adding these track geometry limits is necessary to provide an equivalent margin of safety for operations at higher cant deficiency. These limits are based on the results of simulation studies to determine the safe amplitudes of track geometry surface variations. *See Technical Background,* Section IV.B, above.

As noted in § 213.313, FRA received comment on the inclusion of proposed footnote 3, specifying that curved track surface limits apply only when track curvature is greater than 0.25 degree. In response to this comment and as a result of Task Force discussions following publication of the NPRM, FRA is adding § 213.313 to make clear that limits specified for curved track apply only to track having a curvature greater than 0.25 degree. By defining curved track as track having a curvature greater than 0.25 degree, the rule clarifies when the requirements for curved track apply and makes the adoption of proposed footnote 3 unnecessary.

The remaining comment on this section was raised by Bombardier concerning the propriety of retaining Class 9 track standards. FRA has addressed Bombardier's comment in the general discussion of Class 9 track standards in § 213.307.

Section 213.332 Combined Track Alinement and Surface Deviations

As proposed in the NPRM, FRA is adding a new section containing limits addressing combined track alinement and surface deviations. These limits apply to high-speed operations on curved track above 5 inches of cant deficiency, as well as to any operation at Class 9 speeds. (In preparing the final rule, FRA added ''track'' to the section heading to be consistent with the section headings for § 213.327, Track alinement, and § 213.331, Track surface.) An equation-based safety limit is provided for track alinement and surface deviations occurring in combination within a single chord length of each other. The limits in this section are intended to be used only with a TGMS. These limits are applicable on the outside rail in curves, as well as to any of the two rails of a tangent section in Class 9 track. Please see the discussion of § 213.65, which is the companion provision to this section for lower-speed classes of track. Please also note that in accordance with § 213.313, the limits specified for curved track apply only to track having a curvature greater than 0.25 degree.

The only comment on this section was raised by Bombardier concerning the inclusion of standards for Class 9 track. Specifically, Bombardier stated that the inclusion of combined alinement and surface deviations on all Class 9 track, both on curves and on tangent track, was not reviewed by the Task Force. FRA believes that the standards are appropriate for Class 9 track; please see the general discussion of Class 9 track standards in § 213.307. Consequently, this section is being adopted as proposed without substantive change.

Section 213.333 Automated Vehicle-Based Inspection Systems

FRA is making a number of significant changes to this section, which contains requirements for automated vehicle-based measurement systems—i.e., track geometry measurement systems, gage restraint measurement systems, and the systems necessary to monitor vehicle/track interaction (acceleration and wheel/rail forces). For clarity, FRA is revising the original section heading ''Automated vehicle inspection systems'' to reflect more clearly that the inspection systems are vehicle-based—not necessarily vehicles themselves—and are for inspecting track conditions and monitoring vehicle/track interactions.

In paragraph (a)(1), FRA is adding TGMS inspection requirements for low-speed, high cant deficiency operations, which apply as required by § 213.57(i). FRA believes that these requirements are appropriate and necessary for operations at high cant deficiency on lower-speed track classes.

In paragraph (a)(2), FRA is also adding TGMS inspection requirements for Class 6 track, with two different inspection frequencies depending on the amount of cant deficiency. For operations at a qualified cant deficiency, E_u, not exceeding 5 inches, at least one inspection must be conducted each calendar year with not less than 170 days between inspections. If the qualified cant deficiency is more than 5 inches, then at least two inspections must be conducted each calendar year, with not less than 120 days between inspections.

In its comments on the NPRM, however, the AAR stated that the focus of the proposal was on operations with cant deficiency greater than 5 inches, and that there was no support in the record for TGMS inspection requirements on Class 6 track having less cant deficiency. Consequently, the AAR maintained that FRA should not adopt TGMS inspection requirements for Class 6 track where the cant deficiency is not greater than 5 inches.

FRA believes that TGMS inspection of Class 6 track is required for safety regardless of the operating cant deficiency. Nonetheless, the rule does take into account that for track with lower amounts of cant deficiency, the inspection need not be as frequent—only once per calendar year. Further, discussion within the Task Force in response to this comment revealed that, with the exception of a limited amount of Class 6 track in the state of New York owned by CSXT over which Amtrak operated, all other Class 6 track was inspected by Amtrak with a qualifying TGMS meeting the requirements of this final rule. FRA makes clear that an operating railroad may fulfill the requirements of this paragraph, even where it is not the track owner. In this regard, given that Amtrak currently operates over all Class 6 track, it may conduct TGMS inspections as the operating railroad on behalf of any owner of Class 6 track, and FRA does not foresee any change that would impact such an arrangement between a track owner and Amtrak or another high-speed passenger railroad operation. Moreover, as discussed below, FRA is modifying the requirements in the final rule to address issues raised by the AAR concerning a host freight railroad performing TGMS inspections of its track in its own right as the track owner.

Paragraph (a)(3) concerns TGMS inspections for Class 7 track. The former Class 7 track inspection frequency of twice within 120 calendar days with not less than 30 days between inspections is being reduced to not less than 25 days between inspections in this 120-day period. This change is intended to provide additional operational flexibility to fulfill the requirements and allow for more frequent inspections to be performed regularly, for example, on a monthly basis, with additional days in which to complete inspections that may be interrupted or not started as planned.

For Class 8 and 9 track in paragraph (a)(4), the former TGMS inspection frequency of twice within 60 calendar days with not less than 15 days between inspections is also being reduced to not less than 12 days between inspections in this 120-day period. This change is also intended to provide additional operational flexibility to fulfill the requirements and allow for more frequent inspections to be performed regularly, for example, on a bi-weekly basis, with additional days in which to complete inspections that may be interrupted or not started as planned.

In paragraph (b)(1), FRA proposed to retain the requirement that track geometry measurements be taken no more than 3 feet away from the contact point of wheels carrying a vertical load of no less than 10,000 pounds per wheel. In response, the AAR commented that this provision would exclude the use of current test platforms (including hi-rail geometry equipment) that do not meet this axle load, as well as the development and exploration of test platforms that do not meet this axle load. The AAR believed that, lacking justification for this requirement, it should be deleted. FRA also notes that Amtrak commented on proposed paragraphs (b) and (h) as together creating an internal inconsistency that would make compliance difficult. According to Amtrak, it uses a GRMS as its TGMS to take geometry measurements of record for its Class 8 track. Amtrak stated that proposed paragraph (b)(1) would require that the measurement be made within 3 feet of the 10,000-pound loaded axle and that this distance requirement is not attainable on vehicles using a contact geometry system such as a GRMS. Further, Amtrak stated that while it would be possible for an entity to comply with the requirements of both proposed paragraphs (b) and (h), Amtrak could not without incurring the time and expense of running two type of TGMS tests, where it now runs only one. Amtrak therefore suggested that a railroad be deemed in compliance with

paragraph (b)(1) when the railroad performs otherwise qualifying TGMS tests with a GRMS. Amtrak did add that while CSXT was the only freight railroad with track affected by paragraph (b), if high-speed operations do proliferate, freight railroads may find themselves unable to comply with the regulations, as proposed, because they would no longer be able to rely on their hi-rail-mounted TGMS equipment.

FRA notes that the actual text of paragraph (b)(1) as proposed in the NPRM was unchanged from the 1998 Track Safety Standards final rule. What was different was the proposal to expand the application of TGMS inspection requirements to more than track Classes 7 through 9, discussed above. As explained by the AAR in Task Force meetings, this change would make the TGMS requirements applicable to equipment used by CSXT for the inspection of Class 6 track. To address this concern, the text is being revised to allow for FRA approval to measure track geometry other than as specified in this paragraph. Further, the text is being revised to express the 10,000-pound wheel load in kips, for consistency with related provisions, as suggested by Bombardier in its comments on the NPRM. Consequently, as revised, paragraph (b)(1) states that track geometry measurements shall be taken no more than 3 feet away from the contact point of wheels carrying a vertical load of no less than 10 kips per wheel, unless otherwise approved by FRA. FRA believes that this modification also addresses Amtrak's concern by providing added flexibility for the use of different equipment that measures track geometry. FRA did not intend for a railroad to duplicate measurements to comply with both paragraphs (b) and (h). A railroad may use GRMS equipment to perform otherwise qualifying TGMS tests. In the circumstance raised by Amtrak in its comments on the NPRM, Amtrak does not need to repeat the testing performed using GRMS equipment with one of its TGMS vehicles as well.

In paragraph (b)(2), FRA proposed to amend the TGMS sampling interval so that the interval would not exceed 1 foot. FRA believed this proposal to be in line with current practice for providing sufficient data to identify track geometry perturbations. In commenting on the NPRM, however, the AAR stated that there is equipment in use that takes measurements at a 2-foot sampling rate, and that there is no showing that this equipment should be prohibited from taking measurements in this way. The AAR stated that in developing the NPRM the Task Force made no recommendation to prohibit the use of a 2-foot sampling rate, and that FRA should not adopt this change. In addition, Amtrak stated that the 1-foot interval in proposed paragraphs (b)(2) and (c), as discussed below, would conflict with the requirement in paragraph (h)(1)(i) for GRMS equipment to take measurements within a 16-inch interval. Consequently, Amtrak stated that it could not meet the requirements of proposed paragraph (b) with its current GRMS equipment and operating practices.

FRA discussed this comment with the Task Force, and the Task Force concurred with modifying the provision to state that track geometry measurements shall be taken and recorded on a distance-based sampling interval at a nominal distance of 1 foot, not exceeding 2 feet. FRA agrees with the Task Force's recommendation, and in the final rule has expressed the 1-foot sampling interval as the preferable distance, all else being equal. Nonetheless, FRA recognizes that an allowance can be made for sampling at up to a 2-foot interval depending on the circumstances involved, and therefore railroads may continue to use equipment that samples within such a 2-foot interval. FRA has modified a related provision in paragraph (c), as discussed below. Further, the AAR requested that in this final rule, FRA make clear that the use of existing equipment that takes measurement samples on a time-based interval is permitted as long as the equipment produces a measurement within the specified distance-based sampling interval. Accordingly, FRA makes clear that equipment that takes measurement samples on a time-based interval at a rate that corresponds to the distance-based interval specified in this section indeed complies with this provision.

In paragraph (c), as proposed, FRA is specifying the application of the added TGMS inspection requirements for high cant deficiency operations on lower-speed track classes. These requirements in subpart G apply to vehicle types intended to operate at any curving speed producing more than 5 inches of cant deficiency, as provided in § 213.57(i). Requirements for track Classes 6 through 9 have been amended to reference § 213.332, the new section for combined track alinement and surface deviations. In addition, consistent with the modification of paragraph (b)(2), as discussed above, FRA is removing the proposed reference in paragraph (c) to measuring and processing track geometry parameters at an interval of no more than every 1 foot. While former paragraph (c) referenced a 2-foot interval, FRA is removing the distance reference altogether in paragraph (c), as it is adequately addressed in paragraph (b).

Paragraphs (d) through (f) remain unchanged.

During Task Force consideration of the draft final rule, it was noted that former paragraph (g) required the track owner to maintain for a period of one year following an inspection performed by a qualifying TGMS, a copy of the plot and the exception ''printout'' for the track segment involved. Given the proliferation of electronic information since the 1998 Track Safety Standards were issued, FRA's support for appropriate usage of electronic information to comply with FRA's requirements, and FRA's recognition that reports of exceptions do not necessarily need to be printed out, FRA has clarified the paragraph by replacing ''exception printout'' with ''exception report.'' FRA has also modified the paragraph to apply the requirements expressly to railroads, as well as to track owners, consistent with the others changes in this rule to provide clearly for railroads to carry out the regulatory requirements, and not only track owners. The Task Force concurred with these revisions, which clarify FRA's intent.

As noted in the discussion of § 213.110, above, FRA is making changes to the GRMS testing requirements in paragraphs (h) and (i), to reflect recommendations made in the FRA report titled ''Development of Gage Widening Projection Parameter for the Deployable Gage Restraint Measurement System.'' These changes include replacing the GWR equation (and all references to GWR) with a GWP equation, which is intended to compensate for the weight of the testing vehicle. This correction is also intended to result in more uniform strength measurements across the variety of testing vehicles that are in operation. FRA has also modified the Class 8 and 9 track inspection frequency of once per year with not less than 180 days between inspections to require at least one inspection per calendar year with not less than 170 days between inspections. This change is intended to provide additional operational flexibility in scheduling inspections.

In Bombardier's comments on the NPRM, in addition to its general concerns on the inclusion of track Class 9 standards, Bombardier raised specific concern that there was no justification for requiring GRMS to be operated over Class 9 track. Bombardier stated that if the track standards for Class 9 track were contained in an RPA, it would be

expected that the requirements specific to the operation, such as for ballast and the maximum number of allowable defective crossties, would result in a superior track structure than currently required. A GRMS requirement on this structure would result in a significant cost with no safety benefit, according to Bombardier.

FRA notes that the requirement to conduct GRMS testing on Class 9 track was established in the 1998 Track Safety Standards final rule and is not a new requirement. Nonetheless, FRA recognizes that the underlying issue raised by Bombardier relates to track inspection and maintenance standards for a high-speed operation on a dedicated right-of-way. This concern has been addressed in the revision to § 213.307, as discussed above. FRA's regulatory approval may allow for the use of inspection and maintenance criteria and procedures in the alternative to those contained in this subpart, including the GRMS inspection requirements in this paragraph, based upon a showing that at least an equivalent level of safety is provided.

FRA is making one change to paragraph (i) from that proposed in the NPRM by stating the GWP load in kips and not pounds, as suggested by Bombardier in its comments on the NPRM. The Task Force concurred that the units should be stated in kips for consistency among measurement units.

As proposed, FRA is revising the wording and requirements in paragraphs (j) and (k), which concern the monitoring of carbody and truck accelerations. Changes include adding the option to use a portable device when performing the acceleration monitoring, and clarifying the requirements for locating the carbody and truck accelerometers. In paragraph (j)(1), monitoring requirements have been added for operations above 5 inches of cant deficiency on track Classes 1 through 6. These requirements for monitoring high cant deficiency operations apply to vehicle types qualified to operate at any curving speed producing more than 5 inches of cant deficiency, as provided in § 213.57(i) and § 213.345(a), as appropriate. Indeed, these monitoring and qualification requirements for carbody accelerations are intended to be complementary, in the same way as the monitoring requirements for track Classes 7 through 9 are likewise intended to continue to apply to vehicles that have been qualified to operate under § 213.345.

Paragraph (j)(2) applies to operations at track Class 7 speeds, and requires that carbody and truck accelerations be monitored at least twice within any 60-day period with not less than 12 days between inspections on at least one passenger car of each type that is assigned to the service. This paragraph essentially restates requirements applicable to operations on Class 7 track in former paragraph (k), reducing the minimum period between inspections in the 60-day period to not less than 12 days—from not less than 15 days in the former paragraph.

As discussed in Section IV.A, above, FRA is revising the requirement in former paragraph (j) to monitor carbody and truck accelerations each day on at least one vehicle in one train operating at track Class 8 and 9 speeds. Based on data collected to date and to reduce unnecessary burden on the track owner or railroad operating the vehicle type, this monitoring frequency has been reduced from a minimum of once per day to four times within any 7-day period for carbody accelerations, and twice within 60 days for truck accelerations. These requirements are now found in paragraph (j)(3).

In its comments on proposed paragraph (j), the AAR stated that it opposed the monitoring of carbody acceleration for any track class. The AAR stated that these accelerations are often caused by train handling and other normal events unrelated to the condition of the track. Requiring railroads to monitor carbody acceleration and address accelerometer measurements would divert resources from more productive safety endeavors, according to the AAR. Further, the AAR believed that, leaving aside the issue of whether there should be any monitoring of carbody accelerations, proposed paragraph (j) contained contradictory statements regarding the vehicle to be used for monitoring: the first sentence proposed the use of a vehicle having dynamic response characteristics that are representative of other vehicles assigned to the service, while paragraph (j)(1) proposed to require the use of at least one passenger car of each type that is assigned to the service. The AAR added that freight railroads do not possess passenger cars.

As a result of the AAR's comments and discussions within the Task Force, the text of paragraph (j) is being revised to make clear that the requirements apply as specified for the combination of track class, cant deficiencies, and vehicles subject to paragraphs (j)(1) through (3). Consequently, the acceleration monitoring requirements in paragraphs (j)(1) and (2) for speeds up to 125 m.p.h. do not apply to equipment operated in a freight train. In fact, the requirements of this section apply to equipment operating in a freight train only at speeds above 125 m.p.h., per paragraph (j)(3), and only as appropriate; specifically, if no passenger carrying vehicles are assigned to the service, there are no passenger carrying vehicles to monitor. FRA also makes clear that, in the case of Amtrak's Acela service at track Class 8 speeds, the carbody acceleration monitoring requirements of paragraph (j)(3) require only one power car (locomotive), i.e., non-passenger carrying vehicle, and one trailer car (passenger coach) to be monitored. FRA recognizes that only one type of passenger carrying vehicle is currently assigned to this Acela service—the café cars, first class cars, and business class cars are all passenger carrying vehicles of the same dynamic response type.

In commenting on the NPRM, Amtrak stated that the proposal to revise paragraph (k)(1) to require accelerometers on the floor of a vehicle, as near to the center of a truck as practicable, would be a substantive change from the requirement to place them near the end of the vehicle at the floor level. Amtrak noted that accelerometers have been mounted under the floors of its vehicles in the machine bay on the centerline next to the trucks. Amtrak believed that placing the units on the floor would not be an option and would result in the creation of a tripping hazard in the center of the passenger aisle. Nor did Amtrak believe that there was a readily-available space to locate the accelerometers near the centerline within coach cars. Moreover, Amtrak was concerned with locating accelerometers where they could be subject to being kicked and influenced by dropped luggage, which could falsely indicate unsafe readings when there are none. Amtrak therefore requested that FRA retain the original language in paragraph (k) relating to placement of accelerometers.

FRA is revising this final rule in response to Amtrak's comment so that paragraph (k)(1) requires the accelerometers to be attached to the carbody on or under the floor of the vehicle, as near the center of a truck as practicable. FRA did not intend for the proposed text to create the concerns raised by Amtrak. FRA's intent in revising the text has been focused on placing the accelerometers near the center of a truck—not simply near the end of a vehicle. FRA did not intend in any way to remove the needed flexibility for a railroad to locate the accelerators on or under the floor. FRA has revised the rule text accordingly, and the Task Force concurred with this revision.

Paragraph (k)(2) is based on former paragraph (k) and provides that a device for measuring lateral accelerations shall be mounted on a truck frame at a longitudinal location as close as practicable to an axle's centerline (either outside axle for trucks containing more than 2 axles), or, if approved by FRA, at an alternate location. As proposed, a provision has been added to allow the track owner or operating railroad to petition FRA for an exemption from the periodic monitoring requirements in paragraph (j) for truck acceleration, after 2 years, or 1 million miles, whichever occurs first. FRA does note that, pursuant to § 238.427, truck acceleration is continuously monitored on each Tier II passenger vehicle in order to determine if hunting oscillations of the vehicle are occurring during revenue operation.

Paragraph (k)(3) is based on provisions in former paragraphs (j) and (k). Paragraph (j) formerly provided that each track owner have in effect written procedures for the notification of track personnel when on-board accelerometers on trains in Classes 8 and 9 indicate a possible track-related problem, and paragraph (k) formerly provided that for the periodic testing of equipment in track Classes 7 through 9, speeds would be reduced if the vehicle/track interaction safety limits were exceeded. In the NPRM, FRA sought to combine the two provisions, proposing that if any of the carbody lateral, carbody vertical, or truck frame lateral acceleration safety limits in this section's table of vehicle/track interaction safety limits is exceeded, appropriate speed restrictions be applied until corrective action is taken.

In its comments on the NPRM, Amtrak stated that the proposal in paragraph (k)(3) would have required Amtrak to issue a mandatory slow order when an accelerometer recorded an anomaly. Amtrak believed that the proposal was completely impractical and did not take into account the reality of accelerometer testing or railroad operations. Amtrak related the example of an Acela coach with a bad lateral damper that had recorded 57 separate ''hits,'' asserting that under the proposal Amtrak would have been required to have placed slow orders on a large portion of the NEC, impacting all intercity and commuter rail operations. Amtrak stated that the original provision required Amtrak only to have a plan in place to handle accelerometer data issues, that the requirement had served Amtrak well, and that there was no evidence that mandatory slow orders would do anything but result in slower trains.

FRA is revising paragraph (k)(3) in consultation with the Task Force. Paragraph (k)(3) provides that if any of the carbody lateral, carbody vertical, or truck frame lateral acceleration safety limits in this section's table of vehicle/track interaction safety limits is exceeded, corrective action shall be taken as necessary. Paragraph (k)(3) also provides that track personnel shall be notified when the accelerometers indicate a possible track-related problem. FRA did not intend that a railroad issue a slow order merely because an accelerometer registers a ''hit.'' FRA intended that corrective action be taken only as necessary for safety, and has modified the paragraph to make that clearer. Likewise, the requirement to provide notification to track personnel does not, in itself, require that a slow order must be issued. Overall, FRA believes that this paragraph reflects the intent of the former paragraphs and provides the necessary direction and flexibility to the track owner or railroad, or both, to respond appropriately when the accelerometers record that the safety limits in the VTI table have been exceeded.

FRA is modifying the requirement in paragraph (l) for conducting instrumented wheelset (IWS) testing on Class 8 and 9 track. IWS testing is no longer a general requirement applicable for all Class 8 and 9 track. Instead, the specific need to perform IWS testing shall be determined by FRA on a case-by-case basis, after reviewing a report submitted annually by the track owner or railroad detailing the accelerometer monitoring data collected in accordance with paragraphs (j) and (k) of this section. A thorough review of the Acela trainset IWS data, as well as consideration of the economics associated with the testing, revealed that there were significant cost and little apparent safety benefit to justify IWS testing as a general requirement on an annual basis. FRA believes that the testing and monitoring requirements in this section, as a whole, together with FRA's oversight and ability to impose IWS testing requirements as needed, are sufficient to maintain safety at a lower cost.

FRA is making conforming changes to paragraph (m), which, because of the revisions to this section, now requires that the track owner or railroad maintain a copy of the most recent exception records for the inspections required under paragraphs (j) and (k) of this section, and, as appropriate, paragraph (l) should IWS testing be required. FRA noted in publishing the NPRM that the Task Force did not specifically propose to retain paragraph (m), seemingly because of the proposed addition in paragraph (l) of an annual requirement to provide an analysis of the monitoring data gathered for operations on track Classes 8 and 9. However, while the reporting requirement in paragraph (l) is new, it is intended to support the change to the IWS testing requirements so that IWS testing is no longer generally required for Class 8 and 9 operations, as discussed above. Moreover, the reporting requirement is only an annual one and, by virtue of applying only to Class 8 and 9 operations, does not address lower-speed operations.

At the recommendation of the Task Force, paragraph (m) is also being modified to make clear that exception data shall be maintained as a record, but not necessarily a printed record. Each railroad or track owner is in the best position to determine the most efficient and effective method for keeping this information, and FRA makes clear that the information may be maintained electronically. In this regard, § 213.369(f) requires that each vehicle/track interaction safety record required under § 213.333(g) and (m) be made available for inspection and copying by FRA, and § 213.369(e) sets forth conditions for maintaining records in an electronic system.

As proposed, substantial changes are being made to the content of the VTI safety limits table. In general, most of the limits have been clarified or updated. Specifically, the single wheel vertical load ratio limit has been tightened from 0.10 to 0.15 to ensure an adequate safety margin for wheel unloading.

The net axle lateral L/V ratio limit is being modified from 0.5, to $0.4 + 5.0/V_a$, so as to take into account the effect of axle load and more appropriately reflect the cumulative, detrimental effect of track panel shift from heavier vehicles. This net axle lateral load limit is intended to control excessive lateral track shift and is sensitive to a number of track parameters. The well-established, European Prud'homme limit is a function of the axle load and this sensitivity is desired to differentiate between coach car and heavier locomotive loads. The Volpe Center's TREDA (Track Residual Deflection Analysis) simulation work, testing at the Transportation Technology Center, Inc. (TTCI), and comparison to the Prud'homme limit all have indicated the dependence on axle load and the importance of initial, small lateral deflections. Representatives of the Task Force independently reviewed the Volpe Center analysis and concurred

with this change. The limiting condition allows for a small initial deformation and assumes a stable configuration with the accumulation of additional traffic.

Due to variations in vehicle design requirements and passenger ride safety, the carbody acceleration limits have been divided into separate limits for ''Passenger Cars'' and those for ''Other Vehicles'' (such as conventional locomotives). In addition, the carbody transient acceleration limits have been modified from 0.5g lateral and 0.6g vertical to the following: in the lateral direction, 0.65g for passenger cars and 0.75g for other vehicles; and, in the vertical direction, 1.0g for both passenger cars and other vehicles. These changes were developed after considerable research into the performance of existing vehicles during qualification testing and revenue operations. Overall, it was found that the carbody transient acceleration limits need not be as stringent to protect against events leading to vehicle or passenger safety issues.

Based on the small energy content associated with high-frequency acceleration events of the carbody, FRA is adding text to exclude any transient acceleration peaks lasting less than 50 milliseconds. Other changes include the addition of new limits for sustained carbody lateral and vertical oscillatory accelerations, as well as the addition of minimum requirements for sampling and filtering of the acceleration data. The sustained carbody oscillatory acceleration limits have been developed in response to a review of data that was obtained during qualification testing for the MARC–III multi-level passenger car, as discussed in Section IV.A. of the preamble. The sustained carbody oscillatory acceleration limits are 0.10g RMS_t (root mean squared with linear trend removed) for passenger cars and 0.12g RMS_t for other vehicles in the lateral direction, and 0.25g RMS_t for both passenger cars and other vehicles in the vertical direction. These new limits require that the RMS_t value be used in order to attenuate the effects of the linear variation in oscillatory accelerations resulting from negotiation of track segments with changes in curvature or grade by design, such as spirals. Root mean squared values shall be determined over a sliding 4-second window with linear trend removed and be sustained for more than 4 seconds. Acceleration measurements shall be processed through a low pass filter with a minimum cut-off frequency of 10 Hz, and the sample rate for oscillatory acceleration data need be at least 100 samples per second.

FRA is modifying the proposed requirement that peak-to-peak carbody vertical (transient) accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in any 1-second time period, excluding any peak lasting less than 50 milliseconds, not exceed 1.0g for both ''Passenger Cars'' and ''Other Vehicles.'' While the final rule retains the limit for ''Passenger Cars'' of 1.0g, the limit for ''Other Vehicles'' is changed to 1.25g.

In commenting on the NPRM, Bombardier stated that this limit had been an open issue with the Task Force prior to publication of the NPRM and that it should be discussed by the Task Force prior to promulgating this final rule. Further, in commenting on the proposed VTI safety limits, SNCF noted that it did not consider vertical car body acceleration as a safety limit. This issue was discussed with the Task Force, and FRA reevaluated relevant test data, including wheel/rail loads at the time of peak-to-peak acceleration. FRA does not believe that safety will be compromised by changing this limit to 1.25g.

The last set of changes to the VTI table concerns the truck lateral acceleration limit used for the detection of truck hunting. This limit is being tightened from 0.4g to 0.3g and specifies that the value must exceed that limit for more than 2 seconds. Analyses conducted by FRA have shown that this change will help to better identify the occurrences of excessive truck hunting, while excluding high-frequency, low-amplitude oscillations that do not require immediate attention. In addition, this revised limit requires that the RMS_t value be used rather than the RMS_m (root mean squared with mean removed) value. FRA believes that this revision will improve the process for analyzing data while the vehicle is negotiating spiral track segments. Separately, FRA notes that it has retained the entry in the ''Parameter'' column as ''Truck Lateral''—rather than change it to ''Truck Lateral Acceleration'' as proposed in the NPRM. The original entry is stated appropriately and needs no modification.

Section 213.345 Vehicle/Track System Qualification

As part of the 1998 Track Safety Standards final rule, all (passenger and freight) rolling stock was required to be qualified for operation for its intended track class. Qualification testing was intended to demonstrate that the equipment not exceed the VTI limits specified in § 213.333 at any speed less than 10 m.p.h. above the proposed maximum operating speed. An exception was provided for equipment that had already operated in specified track classes. Rolling stock operating in Class 6 track within one year prior to the promulgation of the 1998 final rule was considered qualified. Further, vehicles operating at Class 7 track speeds under conditional waivers prior to the promulgation of the 1998 final rule were qualified for Class 7 track, including equipment that was then-operating on the Northeast Corridor at Class 7 track speeds.

FRA is making a number of significant changes to this section, whose heading is modified from ''Vehicle qualification testing'' to ''Vehicle/track system qualification,'' to reflect more appropriately the interaction of the vehicle and the track over which it operates as a system. These changes include modifying and clarifying this section's substantive requirements, reorganizing the structure and layout of the rule text, and revising the qualification procedures. Among the specific changes, high cant deficiency operations on lower-speed track classes are subject to the requirements of this section in accordance with § 213.57(i).

FRA proposed that paragraph (a) require all vehicle types intended to operate at Class 6 speeds or above, or at any curving speed producing more than 5 inches of cant deficiency, to be qualified for operation for their intended track classes in accordance with this subpart. FRA also proposed that, for qualification purposes, the former over-speed testing requirement be reduced from 10 m.p.h. to 5 m.p.h. above the maximum proposed operating speed. FRA noted in the NPRM that it agreed with the Task Force's view that the former 10 m.p.h. over-speed testing requirement, which was established as part of the 1998 final rule, had become overly conservative based on improved speed control and display technology deployed in current operations.

In commenting on the proposal, the AAR stated that FRA insert language providing that where the maximum operating speed is 150 m.p.h., qualification testing may take place at speeds up to 155 m.p.h. without requiring an RPA for operating at speeds in excess of 150 m.p.h., per former footnote 2 to § 213.307(a). Specifically, the AAR suggested that FRA add a sentence to paragraph (a)(2), stating that speeds up to 155 m.p.h. are permitted for the purpose of qualification testing without an RPA, where the maximum allowable operating speed is 150 m.p.h.

As explained in the discussion of § 213.307, above, FRA is modifying the rule to make clear that an RPA is not

specifically needed to authorize high-speed rail operations. Paragraph (a) concerns qualification testing to operate rail service at such high speeds. No process or procedure as formal as an RPA is necessary to allow such qualification testing above the maximum speeds proposed for the operation. Rather, FRA's very approval of the qualification test plan will provide the necessary oversight to allow for the safe conduct of testing at such speeds, and testing conducted in accordance with this FRA approval shall be deemed in compliance with this part 213. Accordingly, paragraph (a)(2) clarifies that for purposes of qualification testing, speeds may exceed the maximum allowable operating speeds for the class of track in accordance with the test plan approved by FRA.

In its comments on the NPRM, Bombardier stated that paragraph (a) did not contain a Task Force proposal that qualification testing take place not only at any speed up to and including 5 m.p.h. above the proposed maximum operating speed, but also at a speed that produces a cant deficiency greater than 3 inches above the proposed maximum cant deficiency, whichever is less. Bombardier stated that not including this proposal seems appropriate on the higher track classes, since a 5 m.p.h. increase in speed through any curve will not result in cant deficiency greater than 3 inches over the proposed cant deficiency. However, Bombardier believed that this may not be the case when conducting such tests on lower-speed track classes at cant deficiencies exceeding 5 inches. Therefore, Bombardier suggested retaining the proposed language developed by the Task Force, and stated that this comment affected proposed paragraph (f)(2)(ii) in this section as well.

The final rule does not include an alternative requirement that qualification testing take place at a speed that produces a cant deficiency greater than 3 inches above the proposed maximum cant deficiency, if this speed is less than 5 m.p.h. above the proposed maximum operating speed. FRA believes that the 5 m.p.h. over-speed testing requirement is appropriate, especially for the lower-speed track classes, because the requirements of this section apply only to those operations on Class 1 through 5 track at curving speeds producing more than 5 inches of cant deficiency. For example, a speed that produces a cant deficiency greater than 3 inches above this already high level of cant deficiency on Class 2 or 3 track would be unrealistic for testing. Moreover, since that speed would surely exceed 5 m.p.h. above the proposed maximum operating speed, the lesser speed of 5 m.p.h. over the proposed maximum operating speed would apply. FRA has therefore not adopted the suggestion of the commenter.

Paragraph (b) addresses the qualification of existing vehicle types and provides that such vehicle types previously qualified or permitted to operate at track Class 6 speeds or above or at any curving speeds producing more than 5 inches of cant deficiency are considered as being successfully qualified under the requirements of this section for operation at the previously operated speeds and cant deficiencies over the previously operated track segment(s). FRA makes clear that this qualification applies for operation over the previously-operated track segment(s) only. To qualify such vehicle types to operate over new routes (even at the same track speeds), the qualification requirements contained in other paragraphs of this section must be met.

Paragraph (c) contains the requirements for qualifying new vehicle types. The additional (and tighter) carbody acceleration limits in former paragraph (b) for new vehicle qualification have been removed. In their place, this section now references § 213.333 for the applicable VTI limits for accelerations and wheel/rail forces. This change resulted from considerable research into the performance of existing vehicles during qualification testing and revenue operations. Overall, it was found that the acceleration limits in former paragraph (b) need not be as stringent to protect against events leading to vehicle or passenger safety issues. As further specified in this paragraph, vehicle types intended to operate at track Class 6 speeds or above, or at any curving speed producing more than 5 inches of cant deficiency, may be subject to a combination of computer simulations, carbody acceleration testing, truck acceleration testing, and wheel/rail force measurements.

In commenting on proposed paragraph (c), Bombardier stated that for new vehicles intended to operate at track Class 6 speeds, the rule should allow an option for vehicles to be qualified either through simulations or wheel/rail force measurements, to be consistent with what has been allowed for vehicle qualification testing. In addition, NCDOT raised concern that the proposal would have eliminated the use of instrumented wheelsets for the measurement of wheel/rail forces during vehicle qualification testing on track Class 6, noting that computer simulations over a representative segment of the actual route using MCAT were proposed in lieu of IWS tests for speeds up to 110 m.p.h. and up to 6 inches of cant deficiency. NCDOT stated that, while this may be a safe and less expensive method, NCDOT believed it not entirely clear whether the vehicle/track model validation requirements in the NPRM could be achieved and approved by FRA in a reasonable timeframe and at a lower cost than conducting IWS tests. NCDOT stated that, since the concept of using simulations as a qualification tool is relatively new, it suggested an option be allowed to use simulations or instrumented wheelsets for qualification on track Class 6. NCDOT cited that this concept was proposed in the NPRM for qualifying equipment for use on another corridor at the same speed and cant deficiency, and believed it logical to allow this option for new vehicle qualification in this lower speed range. NCDOT suggested that FRA employ this option as an interim measure until the implications of the simulation requirements have been fully verified and justified using a detailed cost-benefit analysis. In addition, NCDOT noted that this option would allow the use of existing instrumentation if it is compatible with the new vehicle type seeking qualification.

FRA agrees with the commenters that instrumented wheelsets are currently used for qualifying vehicle types intended to operate at track Class 6 speeds and that their use for such qualification purposes should be permitted to continue. As recommended by the Task Force, paragraph (c) is being revised by adding a new paragraph (c)(1) to allow for vehicle types intended to operate at track Class 6 speeds to be qualified either through simulations or the use of instrumented wheelsets to demonstrate compliance with the wheel/rail force limits specified in § 213.333.

Consequently, what was proposed as paragraph (c)(1) for computer simulations is being designated as paragraph (c)(2) and modified to state that it applies to new vehicle types intended to operate at track Class 7 speeds or above—not Class 6 speeds or above—as well at any curving speed producing more than 6 inches of cant deficiency, as proposed in the NPRM. FRA notes that, although in accordance with § 213.57(i), vehicle types intended to operate at cant deficiencies greater than 5 inches on the lower-speed track classes are subject to the requirements of this section, the requirements of paragraph (c)(2) apply to the lower-speed track classes only for operations at cant deficiencies greater than 6

inches. This paragraph requires computer simulations to be conducted on both an analytically defined track segment representative of minimally compliant track conditions (MCAT) for the respective track classes as specified in appendix D to this part and on a track segment representative of the full route on which the vehicle type is intended to operate. (See the discussion of MCAT in appendix D, below.)

No comment was specifically raised on the remaining provisions of proposed paragraph (c), and they have been adopted as proposed, newly designated as paragraphs (c)(3) through (c)(5).

Paragraph (c)(3) requires carbody acceleration testing for all operations at track Class 6 speeds or above, or for any operation above 5 inches of cant deficiency. FRA notes that, in accordance with § 213.57(i), vehicle types intended to operate at cant deficiencies greater than 5 inches on the lower-speed track classes are subject to the requirements of this section.

Paragraph (c)(4) requires truck acceleration testing for all operations at track Class 6 speeds or above.

Paragraph (c)(5) provides that measurement of wheel/rail forces, through the use of instrumented wheelsets (or equivalent devices), are required for all operations at track Class 7 speeds or above, or for any operation above 6 inches of cant deficiency. Again, FRA notes that, although in accordance with § 213.57(i), vehicle types intended to operate at cant deficiencies greater than 5 inches on the lower-speed track classes are subject to the requirements of this section, the requirements of paragraph (c)(5) apply to the lower-speed track classes only for operations at cant deficiencies greater than 6 inches.

In paragraph (d), FRA proposed to separate and explicitly define the qualification requirements for previously qualified vehicle types intended to operate on new track segments. Former paragraph (d) provided for test runs to be made over the entire route intended for revenue service, and for previously qualified equipment, the paragraph applied if a new route were proposed at a later date.

In commenting on the NPRM, Bombardier suggested that for vehicles previously qualified under this subpart for a track class and cant deficiency using both wheel/rail force measurements and simulations, the vehicles should be qualified at the same class and cant deficiency on another route without requiring additional simulations or track testing. Bombardier stated that as the vehicle model would have been fully validated with the extensive process required by the rule, including the worst-case MCAT conditions, there would be high cost with no safety benefit to conducting simulations and testing on other routes.

In addition, Amtrak commented extensively on proposed changes to this section concerning the ''portability'' of a vehicle type's qualification. Amtrak commented that it could see no increased safety benefit from the regulatory scheme proposed by FRA. According to Amtrak, the proposed changes would not be an efficient use of railroad resources in that there would be a potentially never-ending series of qualifications and re-qualifications required. Amtrak cited as an example the safe use of Amfleet equipment for decades on the Northeast Corridor. Amtrak believed that if it sought to use that same Amfleet equipment in the Midwest at the same speeds on track maintained to the same track class standards as the Northeast Corridor, then under the proposed regulation Amtrak would have been required to qualify the equipment to the new standards. Moreover, Amtrak raised concern that FRA would have required qualification every time it sought to operate a type of equipment over a new portion of the same route. Amtrak stated that track maintained to a particular FRA class standard in one part of the country is, by definition, identical to any other piece of track maintained to that same standard. Amtrak commented that once equipment is qualified to operate at a particular speed on a class of track, that qualification should suffice to ''certify'' that that equipment can operate at the speed in question over that class of track anywhere in the country. At the same time, Amtrak noted that it did not question the need for local testing of operational and safety issues; all new and expanded service must be thoroughly vetted to make sure that all safety issues are discovered and addressed.

Amtrak added that FRA's proposal was counter to the Task Force recommendation that once a vehicle is qualified for a particular speed and cant deficiency, it would not have to be retested and qualified each time it moved to operate at that same cant deficiency on a new track segment. Amtrak offered another example to illustrate its concern: Amtrak performs testing on a particular piece of equipment to demonstrate that it can operate safely at a particular cant deficiency. This new service is to be run over the territory of a freight railroad host. The equipment is placed in service by Amtrak and operates safely. One year later, a State decides to increase service and builds a new station 5 miles away from the existing terminus of Amtrak service, on the same host railroad's line. Amtrak believed that, under FRA's proposal, Amtrak would have to re-qualify this equipment to operate safely over this ''new'' stretch of railroad, even though the equipment is operated by the same railroad, and the rail line itself is maintained by the same railroad to the same standards as the existing line. Amtrak stated that FRA cannot justify the need for this new qualification as responsive to ''local'' conditions. There are no ''local'' variations to track class standards, according to Amtrak; the track is either maintained to the FRA standards, or it is not. Amtrak also pointed out that portability of equipment qualification could simplify the design and procurement process for future high-speed and commuter equipment. Knowing a particular design already meets FRA safety standards for known track conditions makes it easier to procure equipment, Amtrak stated.

Based on the comments received, the Task Force re-addressed the portability requirements in paragraph (d) for previously qualified vehicle types. The Task Force considered that, although the vehicle type would be unchanged, the vehicle/track system should be appropriately examined for deficiencies prior to its service operation on a new route where performance-based standards are relied upon at track Class 7 speeds or above and at cant deficiencies exceeding 5 inches. Past experience was cited with the high-speed and high cant deficiency qualification of the Acela trainset where testing at a well-maintained track Class 8 test facility did not uncover performance issues that were later identified during the local vehicle/track system testing on the Northeast Corridor, where it was intended to operate. In this regard, the Task Force considered the adequacy to which the new vehicle/track system need be examined during qualification testing to demonstrate system safety.

At the same time, the Task Force took into account that all of the requirements of revised paragraph (c) in this final rule—i.e., wheel/rail force, carbody acceleration and truck lateral acceleration testing, as well as simulations using MCAT and a representative track segment—apply to new vehicle qualification for track Class 7 speeds or above, or at any curving speed producing more than 6 inches of cant deficiency. The MCAT simulations are independent of the route, and once conducted, will have examined the vehicle/track system performance under the majority of worst-case conditions

that might be found on any route. However, MCAT cannot account for all wavelengths and combinations of track deviations that may locally exist on a given route.

For consistency within this final rule, the Task Force agreed that the static lean requirements of § 213.57(d) and § 213.329(d), once met, are independent of the route and noted that no further analysis or testing with respect to these requirements is necessary for previously qualified vehicle types. In addition, vehicle types that have been permitted to operate at cant deficiencies greater than 3 inches but not exceeding 5 inches are considered to be qualified under the new rule for all operations at track Class 6 speeds and below. In the final rule, no testing or simulations are required for previously qualified vehicle types intending to operate on new routes at track Class 1 through Class 6 speeds and at cant deficiencies not exceeding 5 inches.

As provided in paragraph (d)(1), for all operations at track Class 7 speeds or above and cant deficiencies exceeding 5 inches, or for any operation above 6 inches of cant deficiency, simulations or measurement of wheel/rail forces is required to demonstrate safe, local vehicle/track system performance on a new route. For performance-based standards that address the vehicle/track system, simulations are especially useful for demonstrating that when qualified vehicles are intended to operate on a new route, the new vehicle/track system is adequately examined for deficiencies prior to revenue service operation. The Task Force did recognize that, once run for the MCAT deviations, a fully-validated vehicle model required for qualifying new vehicle types under this final rule need not be repeated. Only a simulation for a representative track segment from the new route is required, as the results of the MCAT simulations will be kept on file and be available for reference.

As noted, for previously qualified vehicle types intended to operate on new routes at track Class 1 through Class 6 speeds and at cant deficiencies not exceeding 5 inches, the requirements of this paragraph (d) do not apply. Should the proposed cant deficiency exceed 5 inches but not exceed 6 inches for operations at track Class 1 through 6 speeds, carbody acceleration testing under paragraph (d)(2) is required to demonstrate safe, local vehicle/track system performance on a new route; however, no other qualification testing is required by this paragraph (d).

As provided in paragraphs (d)(2) and (3), for previously qualified vehicle types intended to operate on new routes at track Class 7 speeds or above, carbody and truck acceleration testing is required to demonstrate safe, local vehicle/track system performance. The carbody acceleration testing requirements in paragraph (d)(2) also apply to previously qualified vehicle types intended to operate on new routes at cant deficiencies exceeding 5 inches.

Paragraph (e) clarifies the requirements in former paragraph (c) for the content of the qualification testing plan and adds a requirement for the plan to be submitted to FRA at least 60 days prior to conducting the testing.

In response to a comment from Bombardier, FRA is consolidating proposed paragraph (e)(1), for including in the testing plan the results of required vehicle/track performance simulations, with proposed paragraph (e)(7), for including in the testing plan an analysis of simulation results, when simulations are required as part of vehicle qualification. Together, both paragraphs were potentially duplicative and are now addressed in paragraph (e)(6), which provides that the testing plan shall include the results of vehicle/track performance simulations that are required by this section. As a consequence, the remaining paragraphs, proposed as paragraphs (e)(2) through (6), are designated as paragraphs (e)(1) through (5) in this final rule.

FRA notes that paragraph (e)(3) is being modified from the proposal in paragraph (e)(4) to provide that the test plan identify the maximum angle found on the gage face of the designed (newly profiled) wheel flange referenced with respect to the axis of the wheelset that will be used for the determination of the Single Wheel L/V Ratio safety limit specified in § 213.333. This modification is consistent with the proposal in the NPRM and clarifies that the designed wheel flange is of a wheel newly profiled to that which is intended for service.

In addition, paragraph (e)(4) is being modified from the proposal in paragraph (e)(5), to provide that the test plan identify the target maximum testing speed in accordance with paragraph (a) of this section and the maximum testing cant deficiency. During Task Force consideration of the draft final rule, Interfleet noted that the reference to paragraph (a) concerns the maximum testing speed but that, as proposed, the reference appeared after the mention of the target maximum cant deficiency. Specifically, paragraph (a)(2) provides that for purposes of qualification testing, speeds may exceed the maximum allowable operating speed for the class of track in accordance with the test plan approved by FRA. Therefore, this reordering from the NPRM more clearly associates together the provisions that concern testing speed. At the same time, FRA has clarified what was meant by the ''target'' maximum cant deficiency in proposed paragraph (e)(5). The final rule makes clear that this cant deficiency is the ''maximum testing cant deficiency,'' i.e., the maximum cant deficiency intended (targeted) during qualification testing. In addition, FRA recognizes that not every curve tested in a track segment need or will require the same level of cant deficiency, and therefore, FRA does not expect all test operations to be conducted at the maximum cant deficiency specified in a track segment for each curve within that segment. FRA intends that issues specific to individual qualification tests, such as the targeted cant deficiency for each curve, be addressed in the qualification testing plan, program, and approval process.

Paragraph (f) contains the requirements for conducting qualification testing upon FRA approval of the test plan, expanding on the original requirements in this section. For instance, this paragraph expressly requires that TGMS equipment be operated over the intended test route within 30 days prior to the start of the testing, to help ensure the integrity of the test results. This paragraph also makes clear that exceptions to the safety limits that occur on track or at speeds that are not part of the test do not need to be reported. Specifically, any exception to the safety limits that occurs at speeds below track Class 6 speeds when the cant deficiency is at or below 5 inches does not need to be reported.

During Task Force consideration of the draft final rule, Interfleet recommended that FRA set a timeframe for FRA approval of testing plans so that the track owner or railroad can schedule testing and plan related activities that are resource- or time-critical, or both. FRA notes that for this reason, and as proposed, paragraph (e) specifies that a qualification testing plan be submitted to FRA at least 60 days prior to conducting the testing. This 60-day period is for the benefit of FRA primarily to allow sufficient time to review and approve the plan, and to seek clarification from the submitter as necessary. In some cases, the review and approval may be able to be accomplished in less than 60 days; in other cases, the process may take longer, especially if the plan is incomplete or if questions are raised. FRA is mindful of the concern that FRA not unduly delay testing, and at the same time recognizes that safety is better and more efficiently

served by identifying potential safety issues early in the qualification process. FRA therefore encourages those planning to conduct qualification testing to approach FRA prior to the submission of their test plans should they have any questions or concerns about the testing and approval process.

Paragraph (g) contains the requirements for reporting to FRA the results of the qualification testing program. Bombardier commented that the Task Force did not discuss the proposal that when simulations are required as part of vehicle qualification this report include a comparison of simulation predictions to the actual wheel/rail force or acceleration data, or both, recorded during full-scale testing. Bombardier stated that it understands the intent of the requirement but expressed concern that if not applied in a practical manner, it could significantly delay equipment approvals. Bombardier suggested that this issue be further reviewed and discussed by the Task Force prior to promulgation of the final rule. Bombardier believed that one way of addressing this issue would be to include a section in the Track Safety Standards Compliance Manual that would provide guidance on the means and expectations for correlating simulations with vehicle qualification test results. A good example would be the correlation that was conducted by the Volpe Center on the vehicle models used to develop the regulation, according to Bombardier.

FRA appreciates Bombardier's comment on this proposal. Indeed, FRA has sponsored research at TTCI to establish a set of procedures for validating models used in simulating vehicle/track dynamic interaction. FRA intends to publish this research before the final rule takes effect and appropriately incorporate it into FRA's formal guidance on compliance with the Track Safety Standards. FRA also encourages parties to approach FRA early in the vehicle/track system qualification process should they have any questions or concerns about correlating simulation predictions with actual wheel/rail force or acceleration test data.

Pursuant to paragraph (h), FRA approves a maximum train speed and value of cant deficiency for revenue service, based on the test results and all other required submissions. FRA intends to provide an approval decision normally within 45 days of receipt of all the required information, and has expressed its intent here at the suggestion of the Task Force. A decision may be made earlier or later, depending on the circumstance of each request. Paragraph (h) also makes clear that FRA may impose conditions necessary for safely operating at the maximum train speed and value of cant deficiency approved for revenue service.

Paragraph (i) is being added to this section. In commenting on the NPRM, Amtrak stated that a significant paragraph approved by the Task Force has been omitted. The paragraph proposed that documents required by this section must be submitted to FRA by either the tracker owner or an operating entity that provides service with the vehicle type over trackage of one or more track owners with the written consent of all affected track owners. According to Amtrak, the second clause is an important tenet in the operating world when an entity like Amtrak wants to operate a high-speed train over trackage owned by one or more freight railroads. Without this paragraph, Amtrak believed that each of the host railroads would be required to submit the paperwork and perform the tests required.

The AAR likewise noted the Task Force's concurrence that this section would contain a requirement that all documents be submitted to FRA by either the track owner or by the operating entity with the written consents of all affected track owners. The AAR stated that FRA removed this provision without any explanation. According to the AAR, FRA should not approve any application for permission to operate vehicles at Class 6 speeds or at cant deficiencies without the concurrence of the track owner(s), which the AAR believed was the underlying intent behind the proposal that the necessary documents should be submitted either by a track owner or with the approval of the track owner(s).

FRA did not intend such a result. Paragraph (i) is therefore being added to this section to make clear that the documents required by this section must be provided to FRA by either (1) the track owner, or (2) a railroad that provides service with the same vehicle type over trackage of one or more track owner(s), with the written consent of each affected track owner. The Task Force concurred with this addition, making clearer and more concise what was earlier discussed prior to the publication of the NPRM. In this regard, FRA makes clear that a ''railroad'' includes what was previously identified as an ''operator of a passenger or commuter service'' in former § 213.57(e) and § 213.329(f). For example, Amtrak is a railroad that provides passenger service over trackage often owned by other entities, usually freight railroads. Amtrak is also a track owner over whose trackage numerous passenger railroads operate, such as SEPTA and NJ Transit, which commented on the NPRM.

Section 213.355 Frog Guard Rails and Guard Faces; Gage

This section currently sets limits for guard check gage and guard face gage for track Classes 6 through 9. As proposed, FRA is making minor changes to the way in which the requirements of this section are formatted. However, no substantive change is intended.

Appendix A to Part 213—Maximum Allowable Curving Speeds

This appendix formerly contained only two charts showing maximum allowable operating speeds in curves, by degree of curvature and inches of unbalance (cant deficiency): table 1, which applies to curves with 3 inches of unbalance; and table 2, which applies to curves with 4 inches of unbalance. Because this final rule facilitates the use of higher cant deficiencies, this appendix has been expanded to include two additional tables: tables 3 and 4, which apply, respectively, to curves with 5 and 6 inches of unbalance. While this rule does provide for operations at higher levels of unbalance, for convenience, FRA has set out only those tables that it believes are more likely to be commonly used.

FRA notes that in response to comments by Bombardier on the NPRM, FRA is revising the formatting of the tables from that proposed in the NPRM. Bombardier suggested lowering the ''Degree of curvature'' text by one row and inscribing a box around ''Elevation of outer rail (inches)'' for placement over columns 0 through 6, as well as inscribing a box around the ''Maximum allowable operating speed (m.p.h.)'' text for placement over columns 0 though 6. For clarify, each of the tables has been formatted accordingly.

Appendix B to Part 213—Schedule of Civil Penalties

Appendix B to part 213 contains a schedule of civil penalties for use in connection with this part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invited commenters to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section, either added or revised, 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. No comment was received.

FRA is amending the penalty schedule to reflect the changes made to part 213. Specifically, FRA is adding entries for new sections §§ 213.65 and 213.332, Combined track alinement and surface deviations. FRA is also adding an entry for § 213.110, Gage restraint measurement systems, which is being revised. Although § 213.110 is not a new section, no entry for this section had previously been included. For each of these entries, FRA has specified guideline penalty amounts that are consistent with those for similar entries in this appendix. FRA is also revising the entries for §§ 213.55, 213.307, 213.327, 213.329, 213.333, and 213.345 so that the entries conform to their respective sections that are being revised in this final rule; however, no change to the guideline penalty amounts is being made.

In addition, in preparing the final rule, FRA identified other items in this appendix in need of revision. First, FRA is revising the headings for subparts D and G so that they conform to the subpart headings in the rule itself. Second, FRA is modifying this appendix so that it conforms to the changes made by the Concrete Crossties final rule, which was published without revisions to the appendix. *See* 76 FR 18073, April 1, 2011; 76 FR 55819, Sept. 9, 2011. Specifically, FRA is adding an entry for § 213.234, Automated inspection of track constructed with concrete crossties. In addition, FRA is revising the entry for § 213.109, Crossties, to conform to the changes made to that section and is also revising the entry for § 213.127, Rail fastening systems, so that it conforms to the section heading, as revised by that rule.

Appendix D to Part 213—Minimally Compliant Analytical Track (MCAT) Simulations Used for Qualifying Vehicles To Operate at High Speeds and at High Cant Deficiencies

Appendix D is a new appendix containing the requirements for the use of computer simulations to demonstrate compliance with the vehicle/track system qualification testing requirements specified in subpart G of this part. Computational models have become practical and reliable tools for understanding the dynamic interaction of vehicles and track, as a result of advancements made over the last few decades. Such models are capable of assessing the response of vehicle designs to a wide range of track conditions corresponding to the limiting conditions allowed for each class of track. Consequently, portions of the qualification requirements in subpart G can be met by simulating vehicle testing using a suitably-validated vehicle model instead of testing an actual vehicle over a representative track segment.

As explained in paragraph 1, the simulations described in this appendix are required to be performed using a track model containing defined geometry perturbations for different track segments at the limits that are permitted for a specific class of track and level of cant deficiency. This track model is referred to as MCAT. These simulations shall be used to identify vehicle dynamic performance issues prior to service or, as appropriate, a change in service, and demonstrate that a vehicle type is suitable for operation on the track over which it is intended to operate. FRA notes that the lengths of the MCAT segments identified in this appendix are the same as the segment lengths that were used in the modeling of several representative high-speed vehicles. See the discussion of research and computer modeling in the Technical Background section of this final rule, Section IV.B, for additional background.

In order to validate a computer model using MCAT, the predicted results must be compared to actual data from on-track, instrumented vehicle performance testing using accelerometers, or other instrumentation, or both. Validation must also demonstrate that the model is sufficiently robust to capture fundamental responses observed during field testing. Disagreements between predictions and test data may be indicative of inaccurate vehicle parameters, such as for stiffness and damping, or track input. Once validated, the computer model can be used for assessing a range of operating conditions or even to examine modifications to current designs.

In addition, FRA notes that computer modeling using MCAT has the potential to be applied by railroads and by car manufacturers for safety planning purposes beyond the scope of what is required by this rule. The Engineering Task Force of RSAC's Passenger Safety Working Group is considering the use of MCAT in evaluating the operation of high-speed vehicles over lower-speed classes of track, regardless of the cant deficiency. Current FRA standards for Class 1 through 5 track may be unsuitable for suspensions designed for operations at the highest speeds. Consequently, by developing a set of MCAT parameters that reflect the safety standards for Class 1 through 5 track, and conducting simulations using existing high-speed vehicle dynamics models on this lower-speed track, track conditions could be identified that would cause the VTI safety criteria to be exceeded and potentially lead to a derailment. Such MCAT modeling for lower-speed track could also be a useful development tool for foreign car rail manufacturers considering the introduction of vehicles that would be equipped with suspension systems having wheel profiles designed for U.S. standard gage track.

FRA received a number of comments relating to this appendix and is addressing them in the order in which they arise.

Paragraph 2 is being modified from that proposed in the NPRM. Paragraph 2 concerns the application of MCAT for vehicle/track system qualification in § 213.345 and is consequently being modified in accordance with the changes made to § 213.345. Please see the discussion of § 213.345.

FRA is removing proposed paragraph 3 from this appendix. Paragraph 3 proposed that, for a comprehensive safety evaluation, the track owner or railroad identify any non-redundant suspension system element or component that may present a single point of failure. The paragraph further proposed that additional MCAT simulations be included that reflect the fully-degraded mode of the vehicle type's performance due to such a failure. Bombardier objected to proposed paragraph 3, stating that the proposal was not taken into consideration by the Task Force in any of the simulations conducted to develop the proposed track geometry limits. According to Bombardier, should such a requirement be contemplated, it would be necessary to reassess completely the allowable track geometry limits proposed, and neither simulations nor testing had been performed on any existing vehicles that reflect these conditions. Bombardier added that the purpose of MCAT is to evaluate vehicle response to fully-degraded track conditions that represent single-point failures, or near-failures, of the track and in some cases combined track anomalies. If the intent of this paragraph is for the vehicle to meet the vehicle/track interaction safety limits, with the track containing failures(s) and the vehicle suspension containing a single-point failure, Bombardier stated that this would amount to a combined failure which, while theoretically possible, has not been identified as a real issue. Bombardier further stated that most suspension system components, by nature, cannot have redundant elements and that this is true on all ground-based transportation systems. Bombardier believed that other

provisions, both then-existing and proposed, relating to suspension system maintenance adequately address the concerns raised by the proposal with respect to the vehicle. Bombardier maintained that to require further tightening of track geometry standards to address combined track and vehicle suspension failures is unnecessary and impractical. Bombardier also stated that many vehicles have been qualified in accordance with § 213.345 since its promulgation in 1998, and FRA had not indicated why this provision was added as related to past experience or unsafe conditions. Bombardier therefore requested that the provision be removed and that FRA clarify that it was not FRA's intent to include such a requirement.

FRA is not including proposed paragraph 3 as a requirement of this final rule's appendix. FRA intends that for purposes of vehicle/track system safety planning, a comprehensive safety evaluation include the identification of non-redundant suspension system elements or components that may present a single point of failure. Conducting MCAT simulations reflecting the vehicle type's performance in such a fully-degraded mode can then be used to inform safety decisions more fully. However, FRA did not intend to impose a requirement that the MCAT safety performance criteria be met under such circumstances. Nonetheless, should the simulations identify potential safety concerns, the information could be considered for equipment inspection, testing, and maintenance purposes, for example, to help develop appropriate inspection, testing, and maintenance criteria and procedures for the equipment.

Paragraph (a) addresses the validation of the vehicle model used for simulations. Bombardier sought clarification of FRA's proposal, in particular raising concern with the possible misapplication of the proposal for fully validating the vehicle model. Bombardier stated that discrepancies or a lack of correlation between vehicle simulations and actual qualification test data can often be due to errors in the track model or track geometry measurements, wheel and rail profiles, or friction levels, or other causes. Bombardier therefore recommended that validation requirements be reviewed and discussed prior to promulgation of the final rule, and cited related comments on proposed § 213.345(g).

As discussed in § 213.345(g), FRA has sponsored research at TTCI to establish a set of procedures for validating models used in simulating vehicle/track dynamic interaction. FRA intends to publish this research, when complete, and make it part of FRA's formal guidance on compliance with the Track Safety Standards. Again, in the interim, FRA encourages parties to approach FRA early in the qualification process should they have any questions or concerns about correlating simulation predictions with measured track geometry data.

FRA is making one change to paragraph (a) from that proposed in the NPRM. Paragraph (a) now references § 213.345(c)(2)(ii), consistent with the changes to § 213.345(c), discussed above.

Paragraph (b) specifies the layout of the MCAT segments. Bombardier submitted a number of comments on proposed paragraph (b), first taking issue with the last sentence in proposed (b)(1)(i) that the hunting perturbation segment would be used only on tangent track simulations. Bombardier noted that the proposal was inconsistent with paragraphs (c)(3) and (4) of this appendix, which would require that the hunting segment be used on curves less than 1 degree, and that, as a result, a revision to paragraph (b)(1)(i) or a footnote to figure 1 would be needed to address this inconsistency.

In response to this comment, paragraph (b)(1)(i) is being revised to make clear that the hunting perturbation segment applies both to tangent track and to track that is curved less than 1 degree. Figure 1 is also being modified accordingly to show that the hunting perturbation section must be included for curves less than 1 degree. The modifications to figure 1 and the text in paragraph (b)(1)(i) reference under what curvature conditions the hunting segment is to be used. Since the curvature value is calculated using a combination of speed and cant deficiency, there is no need to specify which track classes need to include this section in curving simulations.

Further, the amplitude value a_1 for the hunting perturbation segment is being lowered from 0.5 inch, as proposed in the NPRM, to 0.25 inch in this final rule. The intent of the hunting perturbation segment is to test vehicle stability on tangent track. A perturbation of 0.5 inch could result in wheel flange contact with the rail and thereby cause one of the VTI safety limits to be exceeded. Consequently, use of a 0.5-inch perturbation could lead to exceedances that would not appropriately reflect the vehicle/track performance concern at issue, or be useful for proper evaluation of the intended feature of the vehicle design. By reducing the amplitude to 0.25 inch, wheel contact should stay on the tread, and the ability of the vehicle to remain stable and resist hunting can more appropriately be examined. This change is intended to advance the purpose of including the hunting perturbation segment and not compromise safety.

In addition, Bombardier commented that the text in proposed paragraph (b)(1)(ix) concerning the combined perturbation segment was inconsistent with § 213.332, Combined track alinement and surface deviations, which has been adopted in this final rule. The text of proposed paragraph (b)(1)(ix) limited its application to curved track segments, while § 213.332 addresses combined track alinement and surface deviation limits for Class 9 track, either curved or tangent. Bombardier noted that a revision to paragraph (b)(1)(ix) or a footnote to figure 1 was needed to address this inconsistency. In response to this comment, paragraph (b)(1)(ix) has been modified to make clear that the segment is to be used for all simulations on Class 9 track. In addition, figure 1 has been modified so that it reflects application of the combined perturbations segment to tangent cases on Class 9 track. These changes make this appendix consistent with § 213.332.

As noted, the MCAT layout in figure 1 has been modified to clarify which segments are required depending on the speed and the degree of curvature involved. In particular, the hunting perturbation segment is not required for simulations of curves greater than or equal to 1 degree; the short warp segment is not required for tangent track simulations; and the combined perturbation segment is required on tangent track only for Class 9 track, and is not required for simulations of no more than 5 inches of cant deficiency other than for Class 9 track, where it is required for all cant deficiency values.

As proposed in the NPRM, table 1 identifies the minimum lengths of the MCAT segments. In response to a request for clarification from Interfleet during the development of the final rule, FRA makes clear that longer segment lengths can be used at higher speeds to allow for transient response to dissipate and to ensure that the filtering window does not cover more than one MCAT segment.

Table 2 is being added to this appendix D to identify the degree of curvature for use in MCAT simulations of both passenger and freight equipment performance on Class 2 through 9 track by speed and cant deficiency, based on the equation in paragraph (b)(3)(i) of this appendix. For track Classes 2 through 5, degrees of curvature are identified only where the cant deficiencies are more than 6 inches,

since those are the only cant deficiencies that require simulations for such track classes. In this regard, degrees of curvature for use in MCAT simulations of equipment performance on Class 1 track are not specified given the extraordinarily high values that would be reached for such cant deficiencies; nonetheless, FRA intends that degrees of curvature for Class 1 track be based on the same equation in paragraph (b)(3)(i) using an appropriate superelevation. FRA also notes that the degrees of curvature for use in MCAT simulations of freight equipment performance on Class 6 (freight) track for speeds of 85 and 90 m.p.h. is shown in italics for cant deficiencies not exceeding 6 inches, to emphasize that these values apply to freight equipment only. MCAT simulations are required for both passenger and freight equipment performance where track Class 6 speeds coincide, i.e., speeds exceeding 90 m.p.h.

Paragraph (c) identifies and describes the simulations that are required using MCAT. To aid the reader, table 3 was originally proposed as table 2 in the NPRM to summarize by vehicle type, cant deficiency, and class of track when assessments of vehicle performance using MCAT are required. Following the NPRM's publication, Bombardier commented that the proposed table needed to be revised to include Class 9 track, and during Task Force discussions it was suggested that this table be made clearer in other ways. Accordingly, FRA has revised the table not only to correct the inadvertent omission noted by Bombardier, but also to make more explicit when simulations are required and when they are not, including identifying when simulations are an option for demonstrating compliance with the rule.

Paragraph (c)(1)(ii) addresses the use of worn wheel profiles in simulations. Bombardier commented that the Task Force agreed that simulations using worn wheels be conducted only for tangent track segments. Bombardier did not believe that this agreement was reflected in the NPRM text that implied that all simulations must be conducted with worn wheel profiles on tangent track and in curves. Bombardier stated that such a requirement was not taken into consideration by the Task Force in any of the simulations conducted to develop the proposed track geometry limits. In discussing this issue with the Task Force following publication of the NPRM, FRA noted that it had believed that the proposed requirement was part of the Task Force's consensus on the NPRM and that worn wheel profiles can both present a problem for stability on tangent track and affect response during curving. Nonetheless, FRA acknowledges that the effect of wheel wear on stability on tangent track is of paramount concern and that, for all other vehicle and rail parameters that might equally or more significantly affect response during curving, only nominal values for such parameters are required to be used in MCAT simulations. Thus, FRA has agreed to limit the requirement to conduct simulations using worn wheel profiles to tangent track segments. However, FRA expects that railroads and car manufacturers will utilize MCAT for broader safety planning purposes and for performance optimization studies while conducting these simulations. As an additional point, Bombardier commented that the words ''running profile'' should be replaced with ''wheel profile'' in this paragraph. The Task Force concurred with this change, and FRA has modified the paragraph accordingly to make the text clearer and more precise.

Paragraph (c)(2) addresses vehicle performance on tangent track Classes 6 through 9. As a general comment on the proposal, Bombardier believed that some effort should be applied to simplifying proposed paragraph (c)(2) by including more information in table 4 (proposed table 3) with less descriptive text in paragraphs (c)(2)(ii) and (iii). Bombardier suggested a proposed revision to the table, and the Task Force recommended that new table 4 be reformatted according to the example shown in Bombardier's comments. Table 4 provides the amplitude values for the MCAT segments described in paragraphs (b)(1)(i) through (vii) and, for track Class 9, (b)(1)(ix), for each speed of the required parametric MCAT simulations. In preparing the table for the final rule, an additional header table has been added, as recommended by Bombardier, containing the maximum operating and simulation speeds for each track class, along with a list of all of the amplitude parameters identifying each MCAT segment to which they correspond, where each segment description can be found, and to which class(es) of track they are applicable. The inclusion of the additional information in new Table 4 does help add clarity; however, even with this additional information, the descriptive text in paragraphs (c)(2)(ii) and (iii) is still required. For example, without the text in paragraph (c)(2)(ii), it would not be clear that running simulations using all three 31-foot-based wavelengths is a requirement, and paragraph (c)(2)(iii) states the requirement to run the final simulations at 5 m.p.h. over the maximum proposed operating speed. Moreover, even though the new information in the table lists a maximum speed for simulations for each track class, only the rule text in paragraphs (c)(2)(iii)(A) through (C) specifies that this 5 m.p.h. overspeed is required when transitioning between classes, e.g., 115 m.p.h. for Class 6 track when qualifying a vehicle for Class 7 track.

Bombardier raised a number of additional comments with table 4 (proposed table 3). Specifically, Bombardier commented that the combined deviation parameters a_7, a_8 and a_{13} should be specified in the table for track Class 9, and that the repeated surface parameter a_9 for the 124-foot wavelength on track Class 9 be specified as 0.625 inch. Bombardier is correct that there were no values specifically identified for combined deviation parameters a_7, a_8 and a_{13} for track Class 9, and that the repeated surface parameter a_9 for the 124-foot wavelength on track Class 9 was inadvertently proposed as 0.875 inch.

As was the consensus of the Task Force, new table 4 is being restated to include the combined deviation parameters a_7, a_8 and a_{13} for track Class 9; 31-foot wavelength: a_7=0.333 inch, a_8=0.000 inch, and a_{13}=0.333 inch; 62-foot wavelength: a_7=0.333 inch, a_8=0.000 inch, and a_{13}=0.500 inch; and 124-foot wavelength: a_7=0.500 inch, a_8=0.000 inch, and a_{13}=0.667 inch. Moreover, the repeated surface parameter a_9 for the 124-foot wavelength on track Class 9 has been restated as 0.625 inch. These changes make the table consistent with § 213.332, which provides that combined deviation limits apply to all Class 9 track, including tangent sections. These changes also make the table consistent with the repeated surface limit of 0.625 inch for the 124-foot wavelength on Class 9 track in § 213.331(c).

In addition, FRA notes that on closer examination of the proposed MCAT tables FRA found and corrected some inadvertent errors in the proposed track Class 6 amplitude parameters for a_3 (gage widening) and a_6 (single alinement). The corrected values now reflect both the maximum permissible gage and the maximum permissible alinement variations. Specifically, for Class 6 track in table 4 of the final rule, for the 31-foot perturbation wavelength, the a_3 parameter is 0.75 inch; and for the 62-foot perturbation wavelength, the a_3 paramenter is 0.75 inch, and the a_6 parameter is 0.

FRA is also formatting tables 4 though 7 in this final rule so that the a_1

(hunting) and a_{12} (short warp) amplitude parameters are in their own designated rows, rather than grouped with the 31-, 62-, and 124-foot wavelengths. These hunting and short warp perturbation segments have fixed wavelengths, 10 feet and 20 feet, respectively, which are now explicitly stated in the tables to identify clearly the wavelength to be used for simulating these perturbations.

Paragraph (c)(3) addresses vehicle performance on curved track Classes 6 through 9. As for paragraph (c)(2), Bombardier stated that some effort should be applied to simplifying the paragraph by including more information in tables 5 and 6 (proposed tables 4 and 5) with less descriptive text in paragraphs (c)(3)(ii) and (iv). Table 5 applies to Class 6 through 9 curved track with cant deficiency greater than 3 inches but not greater than 5 inches; table 6 applies to Class 6 through 9 curved track with cant deficiency greater than 5 inches. The Task Force concurred that new tables 5 and 6 be reformatted to match the examples shown in Bombardier's comments with an additional header table containing the maximum operating and simulation speeds for each track class, along with a list of all of the amplitude parameters identifying each MCAT segment to which they correspond, where each segment description can be found, and to which class(es) of track they are applicable. Tables 5 and 6 also include the parameter a_1. This hunting perturbation parameter applies to track that is curved less than 1 degree, and has been included accordingly. Please note that the amplitude of this perturbation parameter has been reduced, as discussed above.

The inclusion of the additional information in tables 5 and 6 does help add clarity; however, even with this additional information, the descriptive text in paragraphs (c)(3)(ii) and (iv) is still required. For example, without the text in paragraph (c)(3)(ii), it would not be clear that running simulations using all three 31-foot-based wavelengths is a requirement, and the text in paragraph (c)(3)(iv) specifies the need to run the final simulations at 5 m.p.h. over the maximum proposed operating speed and cant deficiency. Moreover, even though the new information in the tables lists a maximum speed for simulations for each track class, only the rule text in paragraphs (c)(3)(iv)(A) through (C) specifies that this 5 m.p.h. overspeed is required when transitioning between classes, e.g., 115 m.p.h. for Class 6 track when qualifying a vehicle for Class 7 track. In addition, the text in paragraphs (c)(3)(iv)(A) through (C) describes how the 5 m.p.h. overspeed cases at the end of a track class will be conducted at the maximum proposed cant deficiency, using the curvature value, D, calculated using the maximum track class speed and maximum proposed cant deficiency.

Bombardier raised additional comments on tables 5 and 6 (proposed tables 4 and 5). Bombardier noted that the repeated surface parameter a_9 for the 124-foot wavelength on track Class 9 should be 0.625 inch. In the NPRM, in proposed tables 4 and 5, the repeated surface parameter a_9 for the 124-foot wavelength on track Class 9 was identified as 0.875 inch. By consensus of the Task Force, in new tables 5 and 6 the repeated surface parameter a_9 for the 124-foot wavelength on track Class 9 has been corrected to state 0.625 inch. These changes conform the tables with the repeated surface limit of 0.625 inch for the 124-foot wavelength on track Class 9 track provided in § 213.331(c).

Bombardier also commented that the warp parameter a_{12} for track Class 9 should be corrected in tables 5 and 6 (proposed tables 4 and 5). As proposed, the warp parameter a_{12} on track Class 9 was identified as 0.500 inch. The Task Force concurred that the tables be corrected so that the warp parameter a_{12} for track Class 9 be 0.750 inch. These changes also conform the tables with the warp limit of 0.75 inch for Class 9 track provided in § 213.331(a) and (b).

Bombardier additionally commented that the combined deviation surface parameter a_{13} for track Class 9 should be 0.667 inch in table 5 (proposed table 4). In the NPRM, the combined deviation surface parameter a_{13} for track Class 9 was proposed as 0.833 inch. The Task Force concurred that new table 5 reflect that the combined deviation surface parameter a_{13} for track Class 9 be 0.667 inch. This change conforms the surface value in the table with the combined deviation equation stated in § 213.332, when evaluated using the corresponding combined deviation alinement parameter a_7 found in the table.

FRA also notes that, on closer examination of the MCAT tables, FRA found and corrected some inadvertent errors in the proposed track Class 6 amplitude parameters for a_3 (gage widening) and a_6 (single alinement). The corrected values now reflect both the maximum permissible gage and the maximum permissible alinement variations. Specifically, for Class 6 track in tables 5 and 6 of the final rule, for the 31-foot perturbation wavelength, the a_3 parameter is 0.75 inch; and for the 62-foot perturbation wavelength, the a_3 paramenter is 0.75 inch, and the a_6 parameter is 0.

Paragraph (c)(4) addresses vehicle performance on curved track Classes 1 through 5 at high cant deficiency. As for paragraphs (c)(2) and (3) Bombardier raised the same general comment that this section be simplified by including more information in table 7 (proposed table 6) with less descriptive text in paragraphs (c)(4)(ii) and (iv). (FRA notes that Bombardier's comment references paragraph (c)(3) under a discussion of paragraph (c)(4) and has treated the comment as relating to paragraph (c)(4).) As for the other tables, the Task Force concurred that table 7 (proposed table 6) be reformatted. Table 7 also includes the parameter a_1, which has been added for curves less than 1 degree, as noted above.

The inclusion of the additional information in table 7 helps add clarity; however, even with this additional information, the descriptive text in paragraphs (c)(4)(ii) and (iv) is still required. For example, without the text in paragraph (c)(4)(ii), it would not be clear that running simulations using both the 31-foot and 62-foot wavelengths is required for assessing vehicle performance on curved track Classes 1 through 5 at high cant deficiency.

Proposed Amendments to 49 CFR Part 238, Passenger Equipment Safety Standards

Subpart C—Specific Requirements for Tier I Passenger Equipment

Section 238.227 Suspension System

FRA is modifying this section so that it conforms with the changes being made to part 213 of this chapter and also to provide cross-references to relevant sections of part 213. Overall, these revisions help to reconcile the requirements of the 1998 Track Safety Standards final rule and the 1999 Passenger Equipment Safety Standards final rule for Tier I passenger equipment, i.e., passenger equipment operated at speeds not exceeding 125 mph.

For consistency throughout this part and part 213 of this chapter, the term ''hunting oscillations'' in paragraph (a) is being replaced with the term ''truck hunting,'' which has the same meaning as that for ''truck hunting'' in 49 CFR 213.333. Truck hunting is defined in the table of vehicle/track interaction safety limits in § 213.333 as ''a sustained cyclic oscillation of the truck evidenced by lateral accelerations exceeding 0.3g root mean squared for more than 2 seconds.'' The Task Force believed that the term ''hunting oscillations,'' which was formerly defined in paragraph (b) of this section as ''lateral oscillations of

trucks that could lead to a dangerous instability,'' has a less definite meaning and could be applied unevenly as a result. The Task Force therefore preferred using the definition of ''truck hunting'' in part 213 with its more specific criteria, and FRA agrees that more specific criteria provide more certainty. Unlike § 213.333, however, paragraph (a) of this section applies to all Tier I passenger equipment, regardless of track class or level of cant deficiency.

The pre-revenue service qualification requirements in paragraph (b) are being revised consistent with the revisions to part 213 of this chapter. Paragraph (b) is also being broadened to address revenue service operation requirements. Paragraph (b), as revised, generally summarizes the qualification and revenue service operation requirements of part 213 for Tier I passenger equipment. This paragraph is not intended to impose any requirement itself not otherwise contained in part 213.

Subpart E—Specific Requirements for Tier II Passenger Equipment

Section 238.427 Suspension System

Similar to the revisions to § 238.227, FRA is modifying this section to conform to the changes made in part 213 of this chapter. Overall, these revisions help to reconcile the requirements of the 1998 Track Safety Standards final rule and the 1999 Passenger Equipment Safety Standards final rule.

While paragraph (a)(1) remains unchanged, paragraph (a)(2) is being revised in an effort to summarize the qualification and revenue service operation requirements of part 213 for Tier II passenger equipment. The reference to the suspension system safety standards in appendix C has been removed, as discussed below. The carbody acceleration requirements in paragraph (b) have been revised consistent with the changes to part 213. The steady-state lateral carbody acceleration limits of 0.1g for pre-revenue service qualification and 0.12g for service operation have been revised to a single limit of 0.15g, to conform to the changes in § 213.329. Please see the discussion of § 213.329. The remaining carbody acceleration requirements have been consolidated by referencing the requirements of § 213.333.

Paragraph (c) continues to require that each truck be equipped with a permanently installed lateral accelerometer mounted on the truck frame. However, for consistency throughout this part and part 213 of this chapter, this paragraph is being revised to make clear that the purpose of the accelerometer is to detect ''truck hunting,'' as defined in 49 CFR 213.333. This change helps not only to reconcile the requirements governing truck hunting but to streamline the requirements of this paragraph by removing the term ''hunting oscillations'' and its defining text. If truck hunting is detected, the train monitoring system shall provide an alarm to the engineer, and the train shall be slowed to a speed at least 5 m.p.h. less than the speed at which the truck hunting stopped. This paragraph formerly stated that the notification alarm be provided to the ''train operator,'' and FRA has revised the text to make clear that this notification be provided to the ''locomotive engineer,'' i.e., the crewmember operating the train.

The Task Force believed that the overheat sensor requirements in paragraph (d) were not directly related to suspension system safety and should be specified elsewhere. FRA agreed that the requirements of this paragraph could be stated separately for clarity, and therefore proposed to move them to a new section, § 238.428.

Section 238.428 Overheat Sensors

As proposed, FRA is adding a new section containing the requirements that were previously found in § 238.427(d). However, there has been no change to the substantive rule text. FRA agreed with the Task Force that the requirements for overheat sensors are more appropriately contained in their own section rather than with the requirements for suspension systems in § 238.427. FRA has amended the rule accordingly.

Appendix A to Part 238—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 agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invited comment on the penalty schedule; no comment was received, however.

Accordingly, FRA is amending the penalty schedule to reflect the addition of a new section to part 238, § 238.428, Overheat sensors. The requirements of this section were previously included in § 238.427, Suspension system, and have been set apart for clarity.

Appendix C to Part 238—Suspension System Safety Performance Standards

As proposed, FRA is removing and reserving appendix C, which contained the minimum suspension system safety performance standards for Tier II passenger equipment. FRA believes that removing appendix C is appropriate in light of the changes to § 238.427(a)(2). Section 238.427(a)(2) formerly required that Tier II passenger equipment meet the safety performance standards for suspension systems contained in appendix C, or alternative standards providing at least equivalent safety if approved by FRA under § 238.21. As discussed above, FRA is revising § 238.427(a)(2) to require compliance with the safety standards contained in § 213.333, in lieu of those in appendix C. Given the cross-reference to the requirements in § 213.333, which are more extensive than the ones contained in appendix C, appendix C is no longer necessary and has therefore been removed and reserved.

VII. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action within the meaning of Executive Orders 12866 and 13563, and DOT regulatory policies and procedures (*see* 44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this final rule.

In analyzing the impacts of this rule and the NPRM that preceded it, FRA considered the extent of affected operations based on preliminary plans and policies, many of which are still in development, or subject to change. For example, when the NPRM was published there were plans for high speed operations in Florida, but now those plans have been suspended. In this analysis FRA does not attempt to quantify benefits in the same manner as the NPRM. FRA acknowledges significant uncertainty with the development of certain high speed systems. FRA also acknowledges significant uncertainty with respect to the estimates of time savings and equipment procurement savings. As a result of this uncertainty, and the difficulty in finding reliable evidence for point estimates from which to base a sensitivity analysis, FRA describes its expectations for the benefits and uses its expert technical experience to conclude that the costs will be justified by the benefits.

The changes to geometric standards and performance standards for high-speed operations will not adversely affect any existing operations, which are now limited to Amtrak on the Northeast Corridor, but rather will promote their safe operation. In order to meet the vehicle acceleration limits of the Track Safety Standards' subpart G before the changes made in this final rule, Amtrak had, in effect, adhered to the tighter geometric standards in this rule, even though those standards were not expressly identified. If Amtrak were to have attempted to operate Acela at the maximum allowable speeds and cant deficiencies for which it was qualified, but were to have allowed track deviations to reach the previous maximum limits, the Acela trainset, because of its dynamic characteristics, would have been subject to accelerations in excess of the limits permitted. FRA's modeling has shown that Acela, as it is currently qualified to operate, will meet the safety standards in this final rule.

There will be a relatively small one-time cost ($292,000) to program the new limits into existing geometry measuring systems discussed in the cost section below. Further, those railroads that voluntarily operate at high cant deficiencies will have to maintain their tracks to tighter limits. This cost will be offset by the reduced cost of maintaining curves where entering trains would have to brake to reduce their speeds to meet the prior cant deficiency standard, as discussed below.

FRA believes that significant benefits will arise from this rulemaking. Time savings will result from permitting trains that operate at maximum speeds up to 90 m.p.h. to travel around curves with higher cant deficiencies and thereby more rapidly and efficiently. Previously, the rule did not permit such high cant deficiency operations for these trains, which meant that they had to operate more slowly through curves, adding to trip time. Railroads will also experience cost savings when they purchase new trains for operations at speeds over 90 m.p.h. This will result from increased competition as a greater variety of equipment will be able to meet the revised vehicle/track interaction qualification requirements for speeds over 90 m.p.h. Cost savings will also result from more streamlined testing requirements for new and existing passenger trainsets, regardless of operating speed. Revised testing requirements will also make it much easier to qualify a trainset on additional track once it has been qualified on any track, and provide more flexibility for monitoring trainset performance in service.

Benefits: Equipment Procurement

Future high-speed operations will be made simpler, because the railroad, if it requires equipment manufacturers to provide equipment that will meet performance requirements on minimally compliant track, will find several suppliers of off-the-shelf equipment, likely lowering bid prices, and gaining multiple bidders. Further, some high cant deficiency passenger train operations at speeds in excess of 90 m.p.h. may be able to use equipment without tilting mechanisms under the final rule, saving procurement costs.

Absent this rulemaking, FRA believes railroads would seek to have new equipment used in high-speed train operations built to performance standards at the maximum deviations permitted under the previous geometric standards, or with tilting mechanisms, or both.

FRA believes that future high-speed operations will in comparison save on bids because of the increased number of trainsets and carbuilders that will meet the final rule's standards with little or no modification compared to the number that would have met the prior rule's standards with little or no modification. Because high cant deficiency operations at passenger train speeds in excess of 90 m.p.h. would have been permitted under the prior rule, FRA generally does not believe that there is a benefit from travel time saved at these speeds, only a benefit for equipment procurement.

FRA notes that, in commenting on the economic analysis for the NPRM, which attempted to quantify the benefits of the rule changes, Amtrak stated:

> The assumption that the standards simplify the design process of the equipment and would save $2,000,000 per train set is false. The Acela example indicates the exact opposite to be true. The FRA rules, as existing and proposed, eliminate the possibility of purchasing off-the-shelf equipment. The engineering work required to design new compliant equipment alone would far outstrip any possible savings from the rules if there were any to be had.

FRA believes that the former rule would not have permitted many, and perhaps might not have permitted any, carbuilders to offer off-the-shelf equipment with little or no modification that would have met the acceleration requirements on track with geometry having the maximum allowable deviations. Under the final rule it is likely that several carbuilders could provide off-the-shelf equipment that will meet acceleration requirements on minimally compliant track. This will lower costs through increased competition, and use of existing designs. Further, railroads may now be able to order equipment without tilting mechanisms and operate that equipment at high cant deficiencies, thus saving the costs of tilting mechanisms and making the number of available trainsets even greater. Based on the above, FRA does not agree with Amtrak's comment for the purposes of this final rule. It is not unreasonable to estimate that the equipment procurement benefits alone will justify the costs of the rule. However, even if FRA eliminates from consideration equipment procurement benefits, as a result of Amtrak's comment, FRA believes the high cant deficiency and streamlined testing requirements would justify the costs of the rule.

Benefits: High Cant Deficiency

The provisions for high cant deficiency operations on all track classes are permissive in nature and create no additional net costs. A railroad could either adhere to these provisions in expectation that any additional expenditure would trigger savings and result in an overall net benefit, or simply avoid triggering the provisions. High cant deficiency offers significant opportunities to reduce trip time, as it will reduce the amount of time travelled at the slowest speeds. For example, to travel a mile, a train could take three minutes at 20 m.p.h. or two minutes at 30 m.p.h. Traveling at 30 m.p.h. would reduce trip time by a minute. By contrast a train traveling 120 m.p.h. would take 5 minutes to travel ten miles, while a train traveling 150 m.p.h. would take four minutes to travel the same distance, reducing trip time by one minute relative to the train traveling 120 m.p.h. The net time savings from traveling one mile at 30 m.p.h. instead of 20 m.p.h. is the same as the time savings from traveling ten miles at 150 m.p.h. instead of 120 m.p.h. High cant deficiency can allow that kind of time savings at lower speeds, and therefore offers a relatively low-cost way of improving trip time. The United States is investing more in passenger rail transportation, and this is a very good way to make the high-speed rail system more efficient.

FRA believes that use of higher cant deficiencies will become much more common over the coming years, although, nearer term, relatively few opportunities for new operations at cant deficiencies in excess of 5 inches will present themselves. In any event, there could be a benefit to some operations from the potential enhanced speeds.

For illustrative purposes, Amtrak has placed values of $2 million or more annually for a reduction of 1 minute in total travel time on the south end of the Northeast Corridor, and in excess of $1 million for such a reduction on the north end of the Northeast Corridor, for its high-speed operations. FRA expects significant travel time savings on the Northeast Corridor, and eventually other routes, from the high cant deficiency provisions. These benefits are partially offset by the additional costs of maintaining track for high cant deficiency operation, but this offset is roughly two orders of magnitude less than the benefits. Moreover, the additional maintenance costs are at least partially offset by reduced track maintenance from passenger trains that would otherwise have subjected rail to braking forces at entries to curves, and by efficiency savings because the passenger trains can clear the track segments more rapidly so that other trains can use the tracks.

FRA also notes that there is no procurement benefit considered for passenger train operations at speeds no greater than 90 m.p.h, principally because these operations were not permitted to operate at high cant deficiency under the prior rule. Similarly, the time savings from high cant deficiency for passenger operations at speeds in excess of 90 m.p.h. already existed and is not included in the high cant deficiency benefit. The equipment benefit and the high cant deficiency benefit therefore apply to different classes of operations and are exclusive of each other.

Benefits: Streamlined Testing Requirements

Improvements in the use of monitoring equipment and streamlined qualification procedures have the potential to reduce costs, without any offsetting increases. New procedures will not require as much labor, or as expensive capital, as was required before the final rule, all else being equal. The reduced need for instrumented wheelsets, instrumented cars, and related tests could save roughly $2 million per year on current high-speed operations (based in part on Task Force discussions), and have the potential for similar savings on planned high-speed operations. Furthermore, the current policy of the DOT is to promote balance in the Nation's transportation system in the long-term by growing the market-share of passenger rail service in intercity travel. FRA believes that this policy will result in the implementation of more high-speed rail projects that align with the estimates used in this analysis.

In addition, FRA believes that using MCAT to extend the range of qualified equipment will result in savings greater than $1 million per year. MCAT can work to enhance safety, because a train that is shown to be safe on minimally compliant track will likely be safe under foreseeable operating conditions. In the absence of MCAT, the train could be qualified on very good track, which might later deteriorate over time. Although accelerometers should provide indications of such deterioration, using MCAT to ensure that the train will be safe on track meeting the geometric limits adds to the life-cycle safety of a trainset, most notably because the geometry standards help limit unsafe accelerations that could cause a derailment.

FRA believes that modifications to the vehicle/track system qualification requirements themselves, as opposed to the process, will have no net impact as the changes codify current practice.

Benefits: Other

Certain refinements to the testing requirements will yield greater confidence in the test results and thus enhanced safety levels. Such benefits are not readily quantifiable and FRA has not attempted to quantify them.

Costs: Track Maintenance

When a railroad voluntarily operates passenger trains at high cant deficiencies, the track in curves must have smaller deviations, which in turn means that deviations that would not have to be adjusted in the absence of high cant deficiency operations would have to be adjusted to conform to the standards. On the other hand, if a railroad does not allow high cant deficiency operations, it requires passenger trains to slow down just before they enter curves. The braking imparts a longitudinal force in the rail, making it more likely that the rail will displace from its original alinement. When the rail displaces from its original alinement, it may now have deviations that even exceed the less restrictive standards that would have been applicable in the absence of high cant deficiency operations, and the rail must be adjusted. The process of adjusting rail is roughly the same whether the adjustment occurs because the rail moved longitudinally under braking or the rail needed to be adjusted to meet tighter geometric standards, and thus the cost is roughly equal for either adjustment. FRA believes the probability of needing to adjust the rail is roughly equivalent in either case.

FRA believes that it costs roughly $400 to adjust a rail to restore alinement per occurrence. On good track, the kind most likely to be found in high cant deficiency passenger operations, this occurs about twice a year per mile of curve, at a cost of about $800 per mile per year. FRA believes the difference, if any, between the frequency of such occurrences, and consequently, the maintenance costs for the track with and without high cant deficiency operations, is less than 10%, or $80 per mile per year. FRA is not certain whether maintenance costs will be higher or lower with high cant deficiency operations. FRA expects a difference of plus or minus $80 per mile per year in maintenance costs. Given the uncertainty as to whether the change would be a benefit or a cost, and because FRA anticipates any maintenance costs to be significantly less than the benefits of high cant deficiency operations, FRA does not find any potential maintenance costs would change its core conclusion about this rule.

Costs: Programming

Railroads use automated track geometry measuring systems to determine whether track geometry complies with track safety standards. The final rule adds new standards and dimensions that must be programmed into automated track geometry measuring software before the railroads can operate under the final rule. FRA is contracting to modify the software on FRA's inspection cars to record instances where deviations exceed the maximum allowed under the final rule. Although the contractor has estimated that providing and system testing the software modifications will require roughly $73,000, the amount FRA is going to pay will fall on the government, not on regulated entities, and is not accounted for any further.

Four other entities provide automated track inspection services to railroads, and may need to update their inspection vehicles' software to accommodate the new requirements of the final rule. FRA believes that the $73,000 figure provided by FRA's contractor may be higher than the cost to an entity providing services over a more limited set of tracks, or for other reasons, but that the higher number is a ceiling on likely costs, and is conservative. Thus FRA estimates that it will cost 4 times $73,000, or $292,000 for a one-time expense of updating track inspection software. The programming modifications must occur before the railroads operate under the final rule, so the costs are not discounted.

Offsetting any additional programming costs, but not accounted for in the benefits, the new geometry limits should avoid instances where an excessive acceleration is recorded but the track is within geometry limits, as happens with some frequency under the prior rule. The cost for a railroad to inspect the track in the area of an exceedance of an acceleration limit is more than $100 per instance, and FRA believes the new limits will reduce such instances by at least two per day, more than offsetting any programming costs. As the extent of high cant deficiency operations or high speed operations increases, the number of such exceedances would have increased in the absence of the final rule.

Total Costs

Total costs are $292,000, whether using a 3 percent or 7 percent discount rate, as they are one-time costs. Annualized total costs over twenty years are $27,563 per year, using a 7 percent discount rate, or $19,627 using a 3 percent discount rate.

Net Benefits

FRA expects the equipment procurement, time savings, and streamlined testing benefits to vastly exceed the programming costs of the rule. It is not unreasonable to estimate that the equipment procurement benefits alone will justify the costs of the rule. However, even if FRA eliminates from consideration equipment procurement benefits, as a result of Amtrak's comment, FRA believes the high cant deficiency and streamlined testing requirements would justify the costs of the rule. FRA concludes the rule will have net benefits.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure that the potential impact of this rule on small entities was properly considered, FRA developed this rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a railroad business firm that is ''for-profit'' may be, and still be classified as a ''small entity,'' is 1,500 employees for ''Line-Haul Operating Railroads,'' and 500 employees for ''Switching and Terminal Establishments.'' ''Small entity'' is defined in the Regulatory Flexibility Act as a small business that is not independently owned and operated, and is not dominant in its field of operation. Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR, part 209. The $20 million-limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA has applied this definition for this rulemaking.

There are currently two intercity passenger railroads, Amtrak and the Alaska Railroad Corporation. Neither is considered to be a small entity. Amtrak is a Class I railroad and the Alaska Railroad is a Class II railroad. The Alaska Railroad is owned by the State of Alaska, which has a population well in excess of 50,000.

There are currently 28 commuter railroad operations in the U.S. Most commuter railroads are part of larger transportation organizations that receive Federal funds and serve major metropolitan areas with populations greater than 50,000. However, two commuter rail operations do not fall in this category and are considered small entities. One provides service to and from a sporting venue in Iowa City, Iowa; the second provides service between North Creek and Saratoga Springs, New York. Both operations are conducted at low speeds—with only one reaching a maximum speed as high as 30 m.p.h. Consequently, neither entity will be impacted by the requirements of this rule affecting high-speed operations. Moreover, it is extremely unlikely that either entity would engage in high cant deficiency operations because such operations require relatively expensive rolling equipment capable of tilting to provide a safe and comfortable ride to passengers.

At present, no small entities will be affected by either the high-speed provisions or the high cant deficiency provisions. Small railroads hosting passenger operations can recoup any costs of maintaining infrastructure, through trackage agreements which enable host railroads to recover marginal costs of permitting passenger operations over their tracks, to accommodate high cant deficiency operations, or they can refuse to host such operations, as appropriate. To the extent that new passenger railroads are small entities, and want to take advantage of high cant deficiency and have the means to do so, they will benefit. Nonetheless, FRA does not foresee any situation under which a small entity might be affected by the high-speed provisions in this final rule.

In the NPRM, FRA requested comments on both the analysis and the certification that there will be no significant economic impact on a substantial number of small entities. No comment was received.

Based on these determinations, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain both new and current information collection requirements, and the estimated time to fulfill each requirement, are summarized in the following table. Please note that the table does not include those information collection requirements added by the Concrete Crossties rulemaking, *see* 76 FR 18073 (April 1, 2011), 76 FR 55819 (Sept. 9, 2011), as they are covered under a separate approval, OMB No. 2130–0592, which is current until October 31, 2014.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
213.4—Excepted Track:				
—Designation of track as excepted.	200 railroads	20 orders	15 minutes	5
—Notification to FRA about removal of excepted track.	200 railroads	15 notifications	10 minutes	3
213.5—Responsibility for Compliance.	728 railroads	10 notifications	8 hours	80
213.7—Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track:				
—Designations	728 railroads	1,500 names	10 minutes	250
—Employees trained in CWR procedures.	31 railroads	80,000 employees	24 hours	1,920,000
—Written authorizations and recorded Exams.	31 railroads	80,000 authorizations + 80,000 exams.	10 minutes + 60 minutes	93,333
—Designations (partially qualified) under paragraph (c) of this section.	31 railroads	250 names	30 minutes	125
213.17—Waivers	728 railroads	6 petitions	112 hours	672
213.57—Curves; Elevation and Speed Limitations:				
—Requests to FRA for vehicle type approval.	728 railroads	2 requests/documents	80 hours	160
—Written notification to FRA prior to implementation of higher curving speeds.	728 railroads	2 notifications	8 hours	16
—Written consent of track owner(s) by railroad providing service over the track.	728 railroads	2 consents	8 hours	16
213.110—Gage Restraint Measurement Systems (GRMS):				
—Implementing GRMS; notices and reports.	728 railroads	2 notifications + 1 technical report.	24 hours	72
—GRMS vehicle output reports.	728 railroads	50 reports	60 minutes	50
—GRMS vehicle exception reports.	728 railroads	50 reports	60 minutes	50
—GRMS/PTLF procedures for data integrity.	728 railroads	4 procedure documents	2 hours	8
—GRMS training programs/sessions.	728 railroads	2 programs + 5 sessions	24 hours	168
—GRMS inspection records.	728 railroads	50 records	2 hours	100
213.118—Continuous Welded Rail (CWR); Plan Review and Approval:				
—Plans	728 railroads	728 reviewed plans	4 hours	2,912
—Notification to FRA and employees of plan effective date.	728 railroads	728 notifications + 80,000 notifications.	15 minutes + 2 minutes	2,849
—Written submissions in support of plan.	728 railroads	20 submissions	2 hours	40
—FRA-required revisions to CWR plan.	728 railroads	20 reviewed plans	1 hour	20
213.119—Continuous Welded Rail (CWR); Plan Contents:				
—Fracture report for each broken CWR joint bar.	239 railroads/1 association	12,000 reports	10 minutes	2,000
—Petition for technical conference on fracture reports.	1 association	1 petition	15 minutes	0.25
—Training programs on CWR procedures.	239 railroads/ 1 association	240 amended programs	1 hour	240

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Annual CWR training of employees.	31 railroads	80,000 employees	30 minutes	40,000
—Recordkeeping (track with CWR).	239 railroads	2,000 records	10 minutes	333
—Recordkeeping for CWR rail joints.	239 railroads	360,000 records	2 minutes	12,000
—Periodic records for CWR rail joints.	239 railroads	480,000 records	1 minute	8,000
—Copy of track owner's CWR procedures.	728 railroads	239 manuals	10 minutes	40
213.233—Track Inspections:				
—Notations	728 railroads	12,500 notations	1 minute	208
213.241—Inspection Records.	728 railroads	1,542,089 records	varies	1,672,941
213.303—Responsibility for Compliance.	2 railroads	1 petition	8 hours	8
213.305—Designation of Qualified Individuals; General Qualifications:				
—Designations	2 railroads	150 designations	60 minutes	150
—Designations (partially qualified) under paragraph (d) of this section.	2 railroads	20 designations	60 minutes	20
213.317—Waivers	2 railroads	1 petition	80 hours	80
213.329—Curves; Elevation and Speed Limitations:				
—FRA approval of qualified vehicle types based on results of testing.	728 railroads	2 documents	80 hours	160
—Written notification to FRA prior to implementation of higher curving speeds.	728 railroads	2 notifications	8 hours	16
—Written consent of track owner(s) by railroad providing service over the track.	728 railroads	2 written consents	8 hours	16
213.333 Automated Vehicle-Based Inspection Systems:				
—Request for alternative measurement distance (new requirement).	10 railroads	1 request	8 hours	8
—Track Geometry Measurement System (TGMS) output/exception reports.	10 railroads	3 reports	40 hours	120
—Track/vehicle performance measurement system; copies of most recent exception records.	10 railroads	20 records	40 hours	800
—Notification to track personnel when on-board accelerometers indicate track related problem (new requirement).	10 railroads	10 notifications	40 hours	400
—Requests for an alternate location for device measuring lateral accelerations (new requirement).	10 railroads	10 requests	40 hours	400
—Report to FRA providing analysis of collected monitoring data (new requirement).	10 railroads	4 reports	8 hours	32
213.341—Initial Inspection of New Rail and Welds:				

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Mill inspection; copy of manufacturer's report.	2 railroads	2 reports	16 hours	32
—Welding plan inspection report.	2 railroads	2 reports	16 hours	32
—Inspection of field welds.	2 railroads	125 records	20 minutes	42
213.343—Continuous welded rail (CWR):				
—Recordkeeping	2 railroads	150 records	10 minutes	25
213.345—Vehicle/Track System Qualification:				
—Qualification program for all vehicle types operating at track Class 6 speeds or above or at curving speeds above 5 inches of cant deficiency (new requirement).	10 railroads	10 programs	120 hours	1,200
—Qualification program for previously qualified vehicle types (new requirement).	10 railroads	10 programs	80 hours	800
—Written consent of track owner(s) by railroad providing service over the track (new requirement).	10 railroads	1 written consent	8 hours	8
213.347—Automotive or Railroad Crossings at Grade:				
—Protection plans	1 railroad	2 plans	8 hours	16
213.369—Inspection Records:				
—Record of inspection of track.	2 railroads	500 records	1 minute	8
—Internal defect inspections and remedial action taken.	2 railroads	50 records	5 minutes	4

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning the following: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Federal Railroad Administration, at 202–493–6292, or Ms. Kimberly Toone, Federal Railroad Administration, at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following, respective addresses: *Robert.Brogan@dot.gov;* or *Kimberly.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (*see* 64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This final rule will not have a substantial effect on the States or their political subdivisions, and it will not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this regulatory action will not impose substantial direct compliance costs on the States or their political subdivisions. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

E. Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (*see* 64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (*see* 42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), 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).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in 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. This final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' *See* 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

H. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 et seq.) prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered to be unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this rulemaking on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act. The requirements are safety standards, which, as noted, are not considered unnecessary obstacles to trade. Moreover, FRA has sought, to the extent practicable, to state the requirements in terms of the performance desired, rather than in more narrow terms restricted to a particular vehicle design, so as not to limit different, compliant designs by any manufacturer—foreign or domestic. FRA has also taken into consideration international standards for the safe interaction of vehicles and the track over which they operate, such as

standards for steady-state, lateral acceleration of passenger carbodies.

I. Privacy Act

Anyone is able to search the electronic form of any comment or petition received into any of FRA's dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). Please see the privacy notice at *http://www.regulations.gov/#!privacyNotice*. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

List of Subjects

49 CFR Part 213

Incorporation by reference, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Incorporation by reference, Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

For the reasons discussed in the preamble, FRA amends parts 213 and 238 of chapter II, subtitle B, of title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Public Law 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

■ 2. Section 213.1 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 213.1 Scope of part.

(a) * * * In general, the requirements prescribed in this part apply to specific track conditions existing in isolation. * * *

* * * * *

■ 3. Section 213.7 is amended by revising paragraphs (a)(2)(i) and (b)(2)(i) to read as follows:

§ 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

(a) * * *

(2) * * *

(i) Knows and understands the requirements of this part that apply to the restoration and renewal of the track for which he or she is responsible;

* * * * *

(b) * * *

(2) * * *

(i) Knows and understands the requirements of this part that apply to the inspection of the track for which he or she is responsible;

* * * * *

■ 4. Section 213.14 is added to read as follows:

§ 213.14 Application of requirements to curved track.

Unless otherwise provided in this part, requirements specified for curved track apply only to track having a curvature greater than 0.25 degree.

Subpart C—Track Geometry

■ 5. Section 213.55 is revised to read as follows:

§ 213.55 Track alinement.

(a) Except as provided in paragraph (b) of this section, alinement may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	Tangent track	Curved track	
	The deviation of the mid-offset from a 62-foot line [1] may not be more than—(inches)	The deviation of the mid-ordinate from a 31-foot chord [2] may not be more than—(inches)	The deviation of the mid-ordinate from a 62-foot chord [2] may not be more than—(inches)
Class 1 track	5	[3] N/A	5
Class 2 track	3	[3] N/A	3
Class 3 track	1¾	1¼	1¾
Class 4 track	1½	1	1½
Class 5 track	¾	½	⅝

[1] The ends of the line shall be at points on the gage side of the line rail, five-eighths of an inch below the top of the railhead. Either rail may be used as the line rail; however, the same rail shall be used for the full length of that tangential segment of the track.
[2] The ends of the chord shall be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.
[3] N/A—Not Applicable

(b) For operations at a qualified cant deficiency, E_u, of more than 5 inches, the alinement of the outside rail of the curve may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	Curved track	
	The deviation of the mid-ordinate from a 31-foot chord [1] may not be more than—(inches)	The deviation of the mid-ordinate from a 62-foot chord [1] may not be more than—(inches)
Class 1 track [2]	[3] N/A	1¼
Class 2 track [2]	[3] N/A	1¼
Class 3 track	¾	1¼
Class 4 track	¾	⅞
Class 5 track	½	⅝

[1] The ends of the chord shall be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.
[2] Restraining rails or other systems may be required for derailment prevention.
[3] N/A—Not Applicable

■ 6. Section 213.57 is revised to read as follows:

§ 213.57 Curves; elevation and speed limitations.

(a) The maximum elevation of the outside rail of a curve may not be more than 8 inches on track Classes 1 and 2, and 7 inches on track Classes 3 through 5. The outside rail of a curve may not be lower than the inside rail by design, except when engineered to address specific track or operating conditions; the limits in § 213.63 apply in all cases.

(b) The maximum allowable posted timetable operating speed for each curve is determined by the following formula—

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

Where—

V_{max} = Maximum allowable posted timetable operating speed (m.p.h.).

E_a = Actual elevation of the outside rail (inches).[1]

E_u = Qualified cant deficiency[2] (inches) of the vehicle type.

D = Degree of curvature (degrees).[3]

(c) All vehicles are considered qualified for operating on track with a cant deficiency, E_u, not exceeding 3 inches. Table 1 of appendix A to this part is a table of speeds computed in accordance with the formula in paragraph (b) of this section, when E_u equals 3 inches, for various elevations and degrees of curvature.

(d) Each vehicle type must be approved by FRA to operate on track with a qualified cant deficiency, E_u, greater than 3 inches. Each vehicle type must demonstrate, in a ready-for-service load condition, compliance with the requirements of either paragraph (d)(1) or (2) of this section.

(1) When positioned on a track with a uniform superelevation equal to the proposed cant deficiency:

(i) No wheel of the vehicle type unloads to a value less than 60 percent of its static value on perfectly level track; and

(ii) For passenger cars, the roll angle between the floor of the equipment and the horizontal does not exceed 8.6 degrees; or

(2) When operating through a constant radius curve at a constant speed corresponding to the proposed cant deficiency, and a test plan is submitted to and approved by FRA in accordance with § 213.345(e) and (f):

(i) The steady-state (average) load on any wheel, throughout the body of the curve, is not less than 60 percent of its static value on perfectly level track; and

(ii) For passenger cars, the steady-state (average) lateral acceleration measured on the floor of the carbody does not exceed 0.15g.

(e) The track owner or railroad shall transmit the results of the testing specified in paragraph (d) of this section to FRA's Associate Administrator for Railroad Safety/Chief Safety Officer (FRA) requesting approval for the vehicle type to operate at the desired curving speeds allowed under the formula in paragraph (b) of this section. The request shall be made in writing and contain, at a minimum, the following information—

(1) A description of the vehicle type involved, including schematic diagrams of the suspension system(s) and the estimated location of the center of gravity above top of rail;

(2) The test procedure,[4] including the load condition under which the testing was performed, and description of the instrumentation used to qualify the vehicle type, as well as the maximum values for wheel unloading and roll angles or accelerations that were observed during testing; and

(3) For vehicle types not subject to parts 229 or 238 of this chapter, procedures or standards in effect that relate to the maintenance of all safety-critical components of the suspension system(s) for the particular vehicle type. Safety-critical components of the suspension system are those that impact or have significant influence on the roll of the carbody and the distribution of weight on the wheels.

(f) In approving the request made pursuant to paragraph (e) of this section, FRA may impose conditions necessary for safely operating at the higher curving speeds. Upon FRA approval of the request, the track owner or railroad shall notify FRA in writing no less than 30 calendar days prior to the proposed implementation of the approved higher curving speeds allowed under the formula in paragraph (b) of this section. The notification shall contain, at a minimum, identification of the track segment(s) on which the higher curving speeds are to be implemented.

(g) The documents required by this section must be provided to FRA by:

(1) The track owner; or

(2) A railroad that provides service with the same vehicle type over trackage of one or more track owner(s), with the written consent of each affected track owner.

(h)(1) Vehicle types permitted by FRA to operate at cant deficiencies, E_u, greater than 3 inches but not more than 5 inches shall be considered qualified under this section to operate at those permitted cant deficiencies for any track segment. The track owner or railroad shall notify FRA in writing no less than 30 calendar days prior to the proposed implementation of such curving speeds in accordance with paragraph (f) of this section.

(2) Vehicle types permitted by FRA to operate at cant deficiencies, E_u, greater than 5 inches shall be considered qualified under this section to operate at those permitted cant deficiencies only for the previously operated or identified track segments(s).

(i) For vehicle types intended to operate at any curving speed producing more than 5 inches of cant deficiency, the following provisions of subpart G of this part shall apply: §§ 213.333(a) through (g), (j)(1), (k) and (m), 213.345, and 213.369(f).

(j) As used in this section—

(1) *Vehicle* means a locomotive, as defined in § 229.5 of this chapter; a freight car, as defined in § 215.5 of this chapter; a passenger car, as defined in § 238.5 of this chapter; and any rail rolling equipment used in a train with either a freight car or a passenger car.

(2) *Vehicle type* means like vehicles with variations in their physical properties, such as suspension, mass, interior arrangements, and dimensions that do not result in significant changes to their dynamic characteristics.

■ 7. Section 213.59 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 213.59 Elevation of curved track; runoff.

(a) * * * If elevation runoff occurs in a curve, the actual minimum elevation shall be used in computing the maximum allowable posted timetable operating speed for that curve under § 213.57(b).

* * * * *

■ 8. Section 213.63 is revised to read as follows:

[1] Actual elevation, E_a, for each 155-foot track segment in the body of the curve is determined by averaging the elevation for 11 points through the segment at 15.5-foot spacing. If the curve length is less than 155 feet, the points are averaged through the full length of the body of the curve.

[2] If the actual elevation, E_a, and degree of curvature, D, change as a result of track degradation, then the actual cant deficiency for the maximum allowable posted timetable operating speed, V_{max}, may be greater than the qualified cant deficiency, E_u. This actual cant deficiency for each curve may not exceed the qualified cant deficiency, E_u, plus 1 inch.

[3] Degree of curvature, D, is determined by averaging the degree of curvature over the same track segment as the elevation.

[4] The test procedure may be conducted whereby all the wheels on one side (right or left) of the vehicle are raised to the proposed cant deficiency, the vertical wheel loads under each wheel are measured, and a level is used to record the angle through which the floor of the vehicle has been rotated.

§ 213.63 Track surface.

(a) Except as provided in paragraph (b) of this section, each track owner shall maintain the surface of its track within the limits prescribed in the following table:

Track surface (inches)	Class of track				
	1	2	3	4	5
The runoff in any 31 feet of rail at the end of a raise may not be more than	3½	3	2	1½	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	3	2¾	2¼	2	1¼
The deviation from zero crosslevel at any point on tangent or reverse crosslevel elevation on curves may not be more than	3	2	1¾	1¼	1
The difference in crosslevel between any two points less than 62 feet apart may not be more than*[1, 2]	3	2¼	2	1¾	1½
*Where determined by engineering decision prior to June 22, 1998, due to physical restrictions on spiral length and operating practices and experience, the variation in crosslevel on spirals per 31 feet may not be more than	2	1¾	1¼	1	¾

[1] Except as limited by § 213.57(a), where the elevation at any point in a curve equals or exceeds 6 inches, the difference in crosslevel within 62 feet between that point and a point with greater elevation may not be more than 1½ inches.

[2] However, to control harmonics on Class 2 through 5 jointed track with staggered joints, the crosslevel differences shall not exceed 1¼ inches in all of six consecutive pairs of joints, as created by seven low joints. Track with joints staggered less than 10 feet apart shall not be considered as having staggered joints. Joints within the seven low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote.

(b) For operations at a qualified cant deficiency, E_u, of more than 5 inches, each track owner shall maintain the surface of the curve within the limits prescribed in the following table:

Track surface (inches)	Class of track				
	1	2	3	4	5
The deviation from uniform profile on either rail at the mid-ordinate of a 31-foot chord may not be more than	N/A[1]	N/A[1]	1	1	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	2¼	2¼	1¾	1¼	1
The difference in crosslevel between any two points less than 10 feet apart (short warp) shall not be more than	2	2	1¾	1¾	1½

[1] N/A—Not Applicable.

■ 9. Section 213.65 is added to subpart C to read as follows:

§ 213.65 Combined track alinement and surface deviations.

On any curved track where operations are conducted at a qualified cant deficiency, E_u, greater than 5 inches, the combination of alinement and surface deviations for the same chord length on the outside rail in the curve, as measured by a TGMS, shall comply with the following formula:

$$\frac{3}{4} \times \left| \frac{A_m}{A_L} + \frac{S_m}{S_L} \right| \leq 1$$

Where—

A_m = measured alinement deviation from uniformity (outward is positive, inward is negative).

A_L = allowable alinement limit as per § 213.55(b) (always positive) for the class of track.

S_m = measured profile deviation from uniformity (down is positive, up is negative).

S_L = allowable profile limit as per § 213.63(b) (always positive) for the class of track.

$$\left| \frac{A_m}{A_L} + \frac{S_m}{S_L} \right| = \text{the absolute (positive) value of the result of } \frac{A_m}{A_L} + \frac{S_m}{S_L} .$$

Subpart D—Track Structure

■ 10. Section 213.110 is amended by revising paragraphs (c) through (f), (l), (p)(2) and (3) to read as follows:

§ 213.110 Gage restraint measurement systems.

* * * * *

(c)(1) The track owner shall also provide to FRA sufficient technical data to establish compliance with the following minimum design requirements of a GRMS vehicle:

(2) Gage restraint shall be measured between the heads of rail—

(i) At an interval not exceeding 16 inches;

(ii) Under an applied vertical load of no less than 10 kips per rail; and

(iii) Under an applied lateral load that provides for a lateral/vertical load ratio of between 0.5 and 1.25 [5], and a load severity greater than 3 kips but less than 8 kips per rail.

(d) Load severity is defined by the formula:

$S = L - cV$

Where—

[5] GRMS equipment using load combinations developing L/V ratios that exceed 0.8 shall be operated with caution to protect against the risk of wheel climb by the test wheelset.

S = Load severity, defined as the lateral load applied to the fastener system (kips).
L = Actual lateral load applied (kips).
c = Coefficient of friction between rail/tie, which is assigned a nominal value of 0.4.
V = Actual vertical load applied (kips), or static vertical wheel load if vertical load is not measured.

(e) The measured gage values shall be converted to a Projected Loaded Gage 24 (PLG24) as follows—

PLG24 = UTG + A × (LTG − UTG)

Where—
UTG = Unloaded track gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application.
LTG = Loaded track gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application point.
A = The extrapolation factor used to convert the measured loaded gage to expected loaded gage under a 24-kip lateral load and a 33-kip vertical load.
For all track—

$$A = \frac{13.513}{(L - 0.258 \times V) - .009 \times (L - 0.258 \times V)^2}$$

Note: The A factor shall not exceed a value of 3.184 under any valid loading configuration.

L = Actual lateral load applied (kips).
V = Actual vertical load applied (kips), or static vertical wheel load if vertical load is not measured.

(f) The measured gage and load values shall be converted to a Gage Widening Projection (GWP) as follows:

$$GWP = (LTG - UTG) \times \frac{8.26}{L - 0.258 \times V}$$

* * * * *

(l) The GRMS record of lateral restraint shall identify two exception levels. At a minimum, the track owner shall initiate the required remedial action at each exception level as defined in the following table—

GRMS parameters[1]	If measurement value exceeds	Remedial action required
First Level Exception		
UTG	58 inches	(1) Immediately protect the exception location with a 10 m.p.h. speed restriction, then verify location; (2) Restore lateral restraint and maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (3) Maintain compliance with § 213.53(b) as measured with the PTLF.
LTG	58 inches.	
PLG24	59 inches.	
GWP	1 inch.	
Second Level Exception		
LTG	57 ¾ inches on Class 4 and 5 track[2].	(1) Limit operating speed to no more than the maximum allowable under § 213.9 for Class 3 track, then verify location; (2) Maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (3) Maintain compliance with § 213.53(b) as measured with the PTLF.
PLG24	58 inches.	
GWP	0.75 inch.	

[1] Definitions for the GRMS parameters referenced in this table are found in paragraph (p) of this section.
[2] This note recognizes that good track will typically increase in total gage by as much as one-quarter of an inch due to outward rail rotation under GRMS loading conditions. For Class 2 and 3 track, the GRMS LTG values are also increased by one-quarter of inch to a maximum of 58 inches. However, for any class of track, GRMS LTG values in excess of 58 inches are considered First Level exceptions and the appropriate remedial action(s) must be taken by the track owner. This 1/4-inch increase in allowable gage applies only to GRMS LTG. For gage measured by traditional methods, or with the use of the PTLF, the table in § 213.53(b) applies.

* * * * *

(p) * * *

(2) *Gage Widening Projection (GWP)* means the measured gage widening, which is the difference between loaded and unloaded gage, at the applied loads, projected to reference loads of 16 kips of lateral force and 33 kips of vertical force.

(3) *L/V ratio* means the numerical ratio of lateral load applied at a point on the rail to the vertical load applied at that same point. GRMS design requirements specify an L/V ratio of between 0.5 and 1.25.

* * * * *

Subpart G—Train Operations at Track Classes 6 and Higher

■ 11. Section 213.305 is amended by revising paragraphs (a)(2)(i) and (b)(2)(i) to read as follows:

§ 213.305 Designation of qualified individuals; general qualifications.

* * * * *

(a) * * *

(2) * * *

(i) Knows and understands the requirements of this subpart that apply to the restoration and renewal of the track for which he or she is responsible;

* * * * *

(b) * * *

(2) * * *

(i) Knows and understands the requirements of this subpart that apply to the inspection of the track for which he or she is responsible.

* * * * *

■ 12. Section 213.307 is amended by revising the section heading and paragraph (a) to read as follows:

§ 213.307 Classes of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section and as otherwise provided in this subpart G, the following maximum allowable speeds apply:

Over track that meets all of the requirements prescribed in this subpart for—	The maximum allowable operating speed for trains is [1]
Class 6 track	110 m.p.h.
Class 7 track	125 m.p.h.
Class 8 track	160 m.p.h.[2]
Class 9 track	220 m.p.h.[2]

[1] Freight may be transported at passenger train speeds if the following conditions are met:

(1) The vehicles utilized to carry such freight are of equal dynamic performance and have been qualified in accordance with § 213.329 and § 213.345.

(2) The load distribution and securement in the freight vehicle will not adversely affect the dynamic performance of the vehicle. The axle loading pattern is uniform and does not exceed the passenger locomotive axle loadings utilized in passenger service, if any, operating at the same maximum speed.

(3) No carrier may accept or transport a hazardous material, as defined at 49 CFR 171.8, except as provided in Column 9A of the Hazardous Materials Table (49 CFR 172.101) for movement in the same train as a passenger-carrying vehicle or in Column 9B of the Table for movement in a train with no passenger-carrying vehicles.

[2] Operating speeds in excess of 125 m.p.h. are authorized by this part only in conjunction with FRA regulatory approval addressing other safety issues presented by the railroad system. For operations on a dedicated right-of-way, FRA's regulatory approval may allow for the use of inspection and maintenance criteria and procedures in the alternative to those contained in this subpart, based upon a showing that at least an equivalent level of safety is provided.

* * * * *

■ 13. Section 213.313 is added to read as follows:

§ 213.313 Application of requirements to curved track.

Unless otherwise provided in this part, requirements specified for curved track apply only to track having a curvature greater than 0.25 degree.

■ 14. Section 213.323 is amended by revising paragraph (b) to read as follows:

§ 213.323 Track gage.

* * * * *

(b) Gage shall be within the limits prescribed in the following table:

Class of track	The gage must be at least—	But not more than—	The change of gage within 31 feet must not be greater than—
Class 6 track	4′8″	4′9¼″	¾″
Class 7 track	4′8″	4′9¼″	½″
Class 8 track	4′8″	4′9¼″	½″
Class 9 track	4′8¼″	4′9¼″	½″

■ 15. Section 213.327 is revised to read as follows:

§ 213.327 Track alinement.

(a) Uniformity at any point along the track is established by averaging the measured mid-chord offset values for nine consecutive points that are centered around that point and spaced according to the following table:

Chord length	Spacing
31′	7′9″
62′	15′6″
124′	31′0″

(b) Except as provided in paragraph (c) of this section, a single alinement deviation from uniformity may not be more than the amount prescribed in the following table:

Class of track	Tangent/ Curved track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than—(inches)
Class 6 track	Tangent	½	¾	1½
	Curved	½	⅝	1½
Class 7 track	Tangent	½	¾	1¼
	Curved	½	½	1¼
Class 8 track	Tangent	½	¾	1
	Curved	½	½	¾
Class 9 track	Tangent	½	½	¾
	Curved	½	½	¾

(c) For operations at a qualified cant deficiency, E_u, of more than 5 inches, a single alinement deviation from uniformity of the outside rail of the curve may not be more than the amount prescribed in the following table:

Class of track	Track type	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than—(inches)
Class 6 track	Curved	½	⅝	1¼
Class 7 track	Curved	½	½	1
Class 8 track	Curved	½	½	¾
Class 9 track	Curved	½	½	¾

(d) For three or more non-overlapping deviations from uniformity in track alinement occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each track owner shall maintain the alinement of the track within the limits prescribed for each deviation:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than— (inches)
Class 6 track	⅜	½	1
Class 7 track	⅜	⅜	⅞
Class 8 track	⅜	⅜	½
Class 9 track	⅜	⅜	½

(e) For purposes of complying with this section, the ends of the chord shall be at points on the gage side of the rail, five-eighths of an inch below the top of the railhead. On tangent track, either rail may be used as the line rail; however, the same rail shall be used for the full length of that tangential segment of the track. On curved track, the line rail is the outside rail of the curve.

■ 16. Section 213.329 is revised to read as follows:

§ 213.329 Curves; elevation and speed limitations.

(a) The maximum elevation of the outside rail of a curve may not be more than 7 inches. The outside rail of a curve may not be lower than the inside rail by design, except when engineered to address specific track or operating conditions; the limits in § 213.331 apply in all cases.

(b) The maximum allowable posted timetable operating speed for each curve is determined by the following formula:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

Where—

V_{max} = Maximum allowable posted timetable operating speed (m.p.h.).

E_a = Actual elevation of the outside rail (inches).[6]

E_u = Qualified cant deficiency[7] (inches) of the vehicle type.

D = Degree of curvature (degrees).[8]

(c) All vehicles are considered qualified for operating on track with a cant deficiency, E_u, not exceeding 3 inches. Table 1 of appendix A to this part is a table of speeds computed in accordance with the formula in paragraph (b) of this section, when E_u equals 3 inches, for various elevations and degrees of curvature.

(d) Each vehicle type must be approved by FRA to operate on track with a qualified cant deficiency, E_u, greater than 3 inches. Each vehicle type must demonstrate, in a ready-for-service load condition, compliance with the requirements of either paragraph (d)(1) or (2) of this section.

(1) When positioned on a track with a uniform superelevation equal to the proposed cant deficiency:

(i) No wheel of the vehicle type unloads to a value less than 60 percent of its static value on perfectly level track; and

(ii) For passenger cars, the roll angle between the floor of the equipment and the horizontal does not exceed 8.6 degrees; or

(2) When operating through a constant radius curve at a constant speed corresponding to the proposed cant deficiency, and a test plan is submitted and approved by FRA in accordance with § 213.345(e) and (f):

(i) The steady-state (average) load on any wheel, throughout the body of the curve, is not less than 60 percent of its static value on perfectly level track; and

(ii) For passenger cars, the steady-state (average) lateral acceleration measured on the floor of the carbody does not exceed 0.15g.

(e) The track owner or railroad shall transmit the results of the testing specified in paragraph (d) of this section to FRA's Associate Administrator for Railroad Safety/Chief Safety Officer (FRA) requesting approval for the vehicle type to operate at the desired curving speeds allowed under the formula in paragraph (b) of this section. The request shall be made in writing and contain, at a minimum, the following information—

(1) A description of the vehicle type involved, including schematic diagrams of the suspension system(s) and the estimated location of the center of gravity above top of rail;

[6] Actual elevation, E_a, for each 155-foot track segment in the body of the curve is determined by averaging the elevation for 11 points through the segment at 15.5-foot spacing. If the curve length is less than 155 feet, the points are averaged through the full length of the body of the curve.

[7] If the actual elevation, E_a, and degree of curvature, D, change as a result of track degradation, then the actual cant deficiency for the maximum allowable posted timetable operating speed, V_{max}, may be greater than the qualified cant deficiency, E_u. This actual cant deficiency for each curve may not exceed the qualified cant deficiency, E_u, plus one-half inch.

[8] Degree of curvature, D, is determined by averaging the degree of curvature over the same track segment as the elevation.

(2) The test procedure,[9] including the load condition under which the testing was performed, and description of the instrumentation used to qualify the vehicle type, as well as the maximum values for wheel unloading and roll angles or accelerations that were observed during testing; and

(3) For vehicle types not subject to part 238 or part 229 of this chapter, procedures or standards in effect that relate to the maintenance of all safety-critical components of the suspension system(s) for the particular vehicle type. Safety-critical components of the suspension system are those that impact or have significant influence on the roll of the carbody and the distribution of weight on the wheels.

(f) In approving the request made pursuant to paragraph (e) of this section, FRA may impose conditions necessary for safely operating at the higher curving speeds. Upon FRA approval of the request, the track owner or railroad shall notify FRA in writing no less than 30 calendar days prior to the proposed implementation of the approved higher curving speeds allowed under the formula in paragraph (b) of this section. The notification shall contain, at a minimum, identification of the track segment(s) on which the higher curving speeds are to be implemented.

(g) The documents required by this section must be provided to FRA by:

(1) The track owner; or

(2) A railroad that provides service with the same vehicle type over trackage of one or more track owner(s), with the written consent of each affected track owner.

(h) (1) Vehicle types permitted by FRA to operate at cant deficiencies, E_u, greater than 3 inches but not more than 5 inches shall be considered qualified under this section to operate at those permitted cant deficiencies for any Class 6 track segment. The track owner or railroad shall notify FRA in writing no less than 30 calendar days prior to the proposed implementation of such curving speeds in accordance with paragraph (f) of this section.

(2) Vehicle types permitted by FRA to operate at cant deficiencies, E_u, greater than 5 inches on Class 6 track, or greater than 3 inches on Class 7 through 9 track, shall be considered qualified under this section to operate at those permitted cant deficiencies only for the previously operated or identified track segments(s). Operation of these vehicle types at such cant deficiencies and track class on any other track segment is permitted only in accordance with the qualification requirements in this subpart.

(i) As used in this section and in §§ 213.333 and 213.345—

(1) *Vehicle* means a locomotive, as defined in § 229.5 of this chapter; a freight car, as defined in § 215.5 of this chapter; a passenger car, as defined in § 238.5 of this chapter; and any rail rolling equipment used in a train with either a freight car or a passenger car.

(2) *Vehicle type* means like vehicles with variations in their physical properties, such as suspension, mass, interior arrangements, and dimensions that do not result in significant changes to their dynamic characteristics.

■ 17. Section 213.331 is revised to read as follows:

§ 213.331 Track surface.

(a) For a single deviation in track surface, each track owner shall maintain the surface of its track within the limits prescribed in the following table:

Track surface (inches)	Class of track			
	6	7	8	9
The deviation from uniform[1] profile on either rail at the mid-ordinate of a 31-foot chord may not be more than	1	1	¾	½
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	1	1	1	¾
Except as provided in paragraph (b) of this section, the deviation from uniform profile on either rail at the mid-ordinate of a 124-foot chord may not be more than	1¾	1½	1¼	1
The deviation from zero crosslevel at any point on tangent track may not be more than[2]	1	1	1	1
Reverse elevation on curves may not be more than	½	½	½	½
The difference in crosslevel between any two points less than 62 feet apart may not be more than[3]	1½	1½	1¼	1
On curved track, the difference in crosslevel between any two points less than 10 feet apart (short warp) may not be more than	1¼	1⅛	1	¾

[1] Uniformity for profile is established by placing the midpoint of the specified chord at the point of maximum measurement.

[2] If physical conditions do not permit a spiral long enough to accommodate the minimum length of runoff, part of the runoff may be on tangent track.

[3] However, to control harmonics on jointed track with staggered joints, the crosslevel differences shall not exceed 1 inch in all of six consecutive pairs of joints, as created by seven low joints. Track with joints staggered less than 10 feet apart shall not be considered as having staggered joints. Joints within the seven low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote.

(b) For operations at a qualified cant deficiency, E_u, of more than 5 inches, a single deviation in track surface shall be within the limits prescribed in the following table:

Track surface (inches)	Class of track			
	6	7	8	9
The difference in crosslevel between any two points less than 10 feet apart (short warp) may not be more than	1¼	1	1[1]	¾
The deviation from uniform profile on either rail at the mid-ordinate of a 124-foot chord may not be more than	1½	1¼	1¼	1

[1] For curves with a qualified cant deficiency, E_u, of more than 7 inches, the difference in crosslevel between any two points less than 10 feet apart (short warp) may not be more than three-quarters of an inch.

[9] The test procedure may be conducted whereby all the wheels on one side (right or left) of the vehicle are raised to the proposed cant deficiency, the vertical wheel loads under each wheel are measured, and a level is used to record the angle through which the floor of the vehicle has been rotated.

(c) For three or more non-overlapping deviations in track surface occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each track owner shall maintain the surface of the track within the limits prescribed for each deviation:

Track surface (inches)	Class of track			
	6	7	8	9
The deviation from uniform profile on either rail at the mid-ordinate of a 31-foot chord may not be more than	¾	¾	½	⅜
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	¾	¾	¾	½
The deviation from uniform profile on either rail at the mid-ordinate of a 124-foot chord may not be more than	1¼	1	⅞	⅝

■ 18. Section 213.332 is added to read as follows:

§ 213.332 Combined track alinement and surface deviations.

(a) This section applies to any curved track where operations are conducted at a qualified cant deficiency, E_u, greater than 5 inches, and to all Class 9 track, either curved or tangent.

(b) For the conditions defined in paragraph (a) of this section, the combination of alinement and surface deviations for the same chord length on the outside rail in a curve and on any of the two rails of a tangent section, as measured by a TGMS, shall comply with the following formula:

$$\frac{3}{4} \times \left| \frac{A_m}{A_L} + \frac{S_m}{S_L} \right| \leq 1$$

Where—

A_m = measured alinement deviation from uniformity (outward is positive, inward is negative).

A_L = allowable alinement limit as per § 213.327(c) (always positive) for the class of track.

S_m = measured profile deviation from uniformity (down is positive, up is negative).

S_L = allowable profile limit as per § 213.331(a) and § 213.331(b) (always positive) for the class of track.

$$\left| \frac{A_m}{A_L} + \frac{S_m}{S_L} \right| = \text{the absolute (positive) value of the result of } \frac{A_m}{A_L} + \frac{S_m}{S_L}.$$

■ 19. Section 213.333 is amended by revising the section heading, paragraphs (a), (b)(1) and (2), and (c), paragraph (g) introductory text, paragraphs (h) through (m), and the Vehicle/Track Interaction Safety Limits table to read as follows:

§ 213.333 Automated vehicle-based inspection systems.

(a) A qualifying Track Geometry Measurement System (TGMS) shall be operated at the following frequency:

(1) For operations at a qualified cant deficiency, E_u, of more than 5 inches on track Classes 1 through 5, at least twice per calendar year with not less than 120 days between inspections.

(2) For track Class 6, at least once per calendar year with not less than 170 days between inspections. For operations at a qualified cant deficiency, E_u, of more than 5 inches on track Class 6, at least twice per calendar year with not less than 120 days between inspections.

(3) For track Class 7, at least twice within any 120-day period with not less than 25 days between inspections.

(4) For track Classes 8 and 9, at least twice within any 60-day period with not less than 12 days between inspections.

(b) * * *

(1) Track geometry measurements shall be taken no more than 3 feet away from the contact point of wheels carrying a vertical load of no less than 10 kips per wheel, unless otherwise approved by FRA;

(2) Track geometry measurements shall be taken and recorded on a distance-based sampling interval preferably at 1 foot not exceeding 2 feet; and

* * * * *

(c) A qualifying TGMS shall be capable of measuring and processing the necessary track geometry parameters to determine compliance with—

(1) For operations at a qualified cant deficiency, E_u, of more than 5 inches on track Classes 1 through 5: § 213.53, Track gage; § 213.55(b), Track alinement; § 213.57, Curves; elevation and speed limitations; § 213.63, Track surface; and § 213.65, Combined track alinement and surface deviations.

(2) For track Classes 6 through 9: § 213.323, Track gage; § 213.327, Track alinement; § 213.329, Curves; elevation and speed limitations; § 213.331, Track surface; and for operations at a cant deficiency of more than 5 inches § 213.332, Combined track alinement and surface deviations.

* * * * *

(g) The track owner or railroad shall maintain for a period of one year following an inspection performed by a qualifying TGMS, a copy of the plot and the exception report for the track segment involved, and additional records which:

* * * * *

(h) For track Classes 8 and 9, a qualifying Gage Restraint Measurement System (GRMS) shall be operated at least once per calendar year with at least 170 days between inspections. The lateral capacity of the track structure shall not permit a Gage Widening Projection (GWP) greater than 0.5 inch.

(i) A GRMS shall meet or exceed minimum design requirements specifying that—

(1) Gage restraint shall be measured between the heads of the rail:

(i) At an interval not exceeding 16 inches;

(ii) Under an applied vertical load of no less than 10 kips per rail; and

(iii) Under an applied lateral load that provides a lateral/vertical load ratio of between 0.5 and 1.25,[10] and a load severity greater than 3 kips but less than 8 kips per rail. Load severity is defined by the formula:

$S = L - cV$

Where—

[10] GRMS equipment using load combinations developing L/V ratios that exceed 0.8 shall be operated with caution to protect against the risk of wheel climb by the test wheelset.

S = Load severity, defined as the lateral load applied to the fastener system (kips).
L = Actual lateral load applied (kips).
c = Coefficient of friction between rail/tie, which is assigned a nominal value of 0.4.
V = Actual vertical load applied (kips), or static vertical wheel load if vertical load is not measured.

(2) The measured gage and load values shall be converted to a GWP as follows:

$$GWP = (LTG - UTG) \times \frac{8.26}{L - 0.258 \times V}$$

Where—

UTG = Unloaded track gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application.
LTG = Loaded track gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application.
L = Actual lateral load applied (kips).
V = Actual vertical load applied (kips), or static vertical wheel load if vertical load is not measured.
GWP = Gage Widening Projection, which means the measured gage widening, which is the difference between loaded and unloaded gage, at the applied loads, projected to reference loads of 16 kips of lateral force and 33 kips of vertical force.

(j) As further specified for the combination of track class, cant deficiencies, and vehicles subject to paragraphs (j)(1) through (3) of this section, a vehicle having dynamic response characteristics that are representative of other vehicles assigned to the service shall be operated over the route at the revenue speed profile. The vehicle shall either be instrumented or equipped with a portable device that monitors onboard instrumentation on trains. Track personnel shall be notified when onboard accelerometers indicate a possible track-related problem. Testing shall be conducted at the frequencies specified in paragraphs (j)(1) through (3) of this section, unless otherwise determined by FRA after reviewing the test data required by this subpart.

(1) For operations at a qualified cant deficiency, E_u, of more than 5 inches on track Classes 1 through 6, carbody acceleration shall be monitored at least once each calendar quarter with not less than 25 days between inspections on at least one passenger car of each type that is assigned to the service; and

(2) For operations at track Class 7 speeds, carbody and truck accelerations shall be monitored at least twice within any 60-day period with not less than 12 days between inspections on at least one passenger car of each type that is assigned to the service; and

(3) For operations at track Class 8 or 9 speeds, carbody acceleration shall be monitored at least four times within any 7-day period with not more than 3 days between inspections on at least one non-passenger and one passenger carrying vehicle of each type that is assigned to the service, as appropriate. Truck acceleration shall be monitored at least twice within any 60-day period with not less than 12 days between inspections on at least one passenger carrying vehicle of each type that is assigned to the service, as appropriate.

(k)(1) The instrumented vehicle or the portable device, as required in paragraph (j) of this section, shall monitor lateral and vertical accelerations of the carbody. The accelerometers shall be attached to the carbody on or under the floor of the vehicle, as near the center of a truck as practicable.

(2) In addition, a device for measuring lateral accelerations shall be mounted on a truck frame at a longitudinal location as close as practicable to an axle's centerline (either outside axle for trucks containing more than 2 axles), or, if approved by FRA, at an alternate location. After monitoring this data for 2 years, or 1 million miles, whichever occurs first, the track owner or railroad may petition FRA for exemption from this requirement.

(3) If any of the carbody lateral, carbody vertical, or truck frame lateral acceleration safety limits in this section's table of vehicle/track interaction safety limits is exceeded, corrective action shall be taken as necessary. Track personnel shall be notified when the accelerometers indicate a possible track-related problem.

(l) For track Classes 8 and 9, the track owner or railroad shall submit a report to FRA, once each calendar year, which provides an analysis of the monitoring data collected in accordance with paragraphs (j) and (k) of this section. Based on a review of the report, FRA may require that an instrumented vehicle having dynamic response characteristics that are representative of other vehicles assigned to the service be operated over the track at the revenue speed profile. The instrumented vehicle shall be equipped to measure wheel/rail forces. If any of the wheel/rail force limits in this section's table of vehicle/track interaction safety limits is exceeded, appropriate speed restrictions shall be applied until corrective action is taken.

(m) The track owner or railroad shall maintain a copy of the most recent exception records for the inspections required under paragraphs (j), (k), and (l) of this section, as appropriate.

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Vehicle/Track Interaction Safety Limits

Wheel-Rail Forces [1]			
Parameter	**Safety Limit**	**Filter/ Window**	**Requirements**
Single Wheel Vertical Load Ratio	≥ 0.15	5 ft	No wheel of the vehicle shall be permitted to unload to less than 15 percent of the static vertical wheel load for 5 or more continuous feet. The static vertical wheel load is defined as the load that the wheel would carry when stationary on level track.
Single Wheel L/V Ratio	$\leq \frac{\tan(\delta) - 0.5}{1 + 0.5\tan(\delta)}$	5 ft	The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail shall not be greater than the safety limit calculated for the wheel's flange angle (δ) for 5 or more continuous feet.
Net Axle Lateral L/V Ratio	$\leq 0.4 + \frac{5.0}{Va}$	5 ft	The net axle lateral force, in kips, exerted by any axle on the track shall not exceed a total of 5 kips plus 40 percent of the static vertical load that the axle exerts on the track for 5 or more continuous feet. Va = static vertical axle load (kips)
Truck Side L/V Ratio	≤ 0.6	5 ft	The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail shall not be greater than 0.6 for 5 or more continuous feet.

Carbody Accelerations [2]			
Parameter	**Passenger Cars**	**Other Vehicles**	**Requirements**
Carbody Lateral (Transient)	≤ 0.65g peak-to-peak 1 sec window[3] excludes peaks < 50 msec	≤ 0.75g peak-to-peak 1 sec window[3] excludes peaks < 50 msec	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in any 1-second time period, excluding any peak lasting less than 50 milliseconds, shall not

			exceed 0.65g and 0.75g for passenger cars and other vehicles, respectively.
Carbody Lateral (Sustained Oscillatory)	≤ 0.10g RMS_t[4] 4 sec window[3] 4 sec sustained	≤ 0.12g RMS_t[4] 4 sec window[3] 4 sec sustained	Sustained oscillatory lateral acceleration of the carbody shall not exceed the prescribed (root mean squared) safety limits of 0.10g and 0.12g for passenger cars and other vehicles, respectively. Root mean squared values shall be determined over a sliding 4-second window with linear trend removed and shall be sustained for more than 4 seconds.
Carbody Vertical (Transient)	≤ 1.0g peak-to-peak 1 sec window[3] excludes peaks < 50 msec	≤ 1.25g peak-to-peak 1 sec window[3] excludes peaks < 50 msec	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in any one second time period, excluding any peak lasting less than 50 milliseconds, shall not exceed 1.0g, or 1.25g, as specified.
Carbody Vertical (Sustained Oscillatory)	≤ 0.25g RMS_t[4] 4 sec window[3] 4 sec sustained	≤ 0.25g RMS_t[4] 4 sec window[3] 4 sec sustained	Sustained oscillatory vertical acceleration of the carbody shall not exceed the prescribed (root mean squared) safety limit of 0.25g. Root mean squared values shall be determined over a sliding 4-second window with linear trend removed and shall be sustained for more than 4 seconds.
Truck Lateral Acceleration[5]			
Parameter	**Safety Limit**	**Filter/ Window**	**Requirements**
Truck Lateral	≤ 0.30g RMS_t[4]	2 sec window[3] 2 sec sustained	Truck hunting shall not develop below the maximum authorized speed. Truck hunting is defined as a sustained cyclic oscillation of the truck evidenced by lateral accelerations exceeding 0.3g root mean squared for more than 2 seconds. Root mean squared values shall be determined over a sliding 2-second window with linear trend removed.

[1] The lateral and vertical wheel forces shall be measured and processed through a low pass filter (LPF) with a minimum cut-off frequency of 25 Hz. The sample rate for wheel force data shall be at least 250 samples per second.

[2] Carbody accelerations in the vertical and lateral directions shall be measured by accelerometers oriented and located in accordance with § 213.333(k).

[3] Acceleration measurements shall be processed through an LPF with a minimum cut-off frequency of 10 Hz. The sample rate for acceleration data shall be at least 100 samples per second.

[4] RMS_t = RMS with linear trend removed.

[5] Truck lateral acceleration shall be measured on the truck frame by accelerometers oriented and located in accordance with § 213.333(k).

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■ 20. Section 213.345 is revised to read as follows:

§ 213.345 Vehicle/track system qualification.

(a) *General.* All vehicle types intended to operate at track Class 6 speeds or above, or at any curving speed producing more than 5 inches of cant deficiency, shall be qualified for operation for their intended track classes in accordance with this subpart. A qualification program shall be used to demonstrate that the vehicle/track system will not exceed the wheel/rail force safety limits and the carbody and truck acceleration criteria specified in § 213.333—

(1) At any speed up to and including 5 m.p.h. above the proposed maximum operating speed; and

(2) On track meeting the requirements for the class of track associated with the proposed maximum operating speed. For purposes of qualification testing, speeds may exceed the maximum allowable operating speed for the class of track in accordance with the test plan approved by FRA.

(b) *Existing vehicle type qualification.* Vehicle types previously qualified or permitted to operate at track Class 6 speeds or above or at any curving speeds producing more than 5 inches of cant deficiency prior to March 13, 2013, shall be considered as being successfully qualified under the requirements of this section for operation at the previously operated speeds and cant deficiencies over the previously operated track segment(s).

(c) *New vehicle type qualification.* Vehicle types not previously qualified under this subpart shall be qualified in accordance with the requirements of this paragraph (c).

(1) *Simulations or measurement of wheel/rail forces.* For vehicle types intended to operate at track Class 6 speeds, simulations or measurement of wheel/rail forces during qualification testing shall demonstrate that the vehicle type will not exceed the wheel/rail force safety limits specified in § 213.333. Simulations, if conducted, shall be in accordance with paragraph (c)(2) of this section. Measurement of wheel/rail forces, if conducted, shall be performed over a representative segment of the full route on which the vehicle type is intended to operate.

(2) *Simulations.* For vehicle types intended to operate at track Class 7 speeds or above, or at any curving speed producing more than 6 inches of cant deficiency, analysis of vehicle/track performance (computer simulations) shall be conducted using an industry recognized methodology on:

(i) An analytically defined track segment representative of minimally compliant track conditions (MCAT—Minimally Compliant Analytical Track) for the respective track class(es) as specified in appendix D to this part; and

(ii) A track segment representative of the full route on which the vehicle type is intended to operate. Both simulations and physical examinations of the route's track geometry shall be used to determine a track segment representative of the route.

(3) *Carbody acceleration.* For vehicle types intended to operate at track Class 6 speeds or above, or at any curving speed producing more than 5 inches of cant deficiency, qualification testing conducted over a representative segment of the route shall demonstrate that the vehicle type will not exceed the carbody lateral and vertical acceleration safety limits specified in § 213.333.

(4) *Truck lateral acceleration.* For vehicle types intended to operate at track Class 6 speeds or above, qualification testing conducted over a representative segment of the route shall demonstrate that the vehicle type will not exceed the truck lateral acceleration safety limit specified in § 213.333.

(5) *Measurement of wheel/rail forces.* For vehicle types intended to operate at track Class 7 speeds or above, or at any curving speed producing more than 6 inches of cant deficiency, qualification testing conducted over a representative segment of the route shall demonstrate that the vehicle type will not exceed the wheel/rail force safety limits specified in § 213.333.

(d) *Previously qualified vehicle types.* Vehicle types previously qualified under this subpart for a track class and cant deficiency on one route may be qualified for operation at the same class and cant deficiency on another route through analysis or testing, or both, to demonstrate compliance with paragraph (a) of this section in accordance with the following:

(1) *Simulations or measurement of wheel/rail forces.* For vehicle types intended to operate at any curving speed producing more than 6 inches of cant deficiency, or at curving speeds that both correspond to track Class 7 speeds or above and produce more than 5 inches of cant deficiency, simulations or measurement of wheel/rail forces during qualification testing shall demonstrate that the vehicle type will not exceed the wheel/rail force safety limits specified in § 213.333. Simulations, if conducted, shall be in accordance with paragraph (c)(2) of this section. Measurement of wheel/rail forces, if conducted, shall be performed over a representative segment of the new route.

(2) *Carbody acceleration.* For vehicle types intended to operate at any curving speed producing more than 5 inches of cant deficiency, or at track Class 7 speeds and above, qualification testing conducted over a representative segment of the new route shall demonstrate that the vehicle type will not exceed the carbody lateral and vertical acceleration safety limits specified in § 213.333.

(3) *Truck lateral acceleration.* For vehicle types intended to operate at track Class 7 speeds or above, measurement of truck lateral acceleration during qualification testing shall demonstrate that the vehicle type will not exceed the truck lateral acceleration safety limits specified in

§ 213.333. Measurement of truck lateral acceleration, if conducted, shall be performed over a representative segment of the new route.

(e) *Qualification testing plan.* To obtain the data required to support the qualification program outlined in paragraphs (c) and (d) of this section, the track owner or railroad shall submit a qualification testing plan to FRA's Associate Administrator for Railroad Safety/Chief Safety Officer (FRA) at least 60 days prior to testing, requesting approval to conduct the testing at the desired speeds and cant deficiencies. This test plan shall provide for a test program sufficient to evaluate the operating limits of the track and vehicle type and shall include:

(1) Identification of the representative segment of the route for qualification testing;

(2) Consideration of the operating environment during qualification testing, including operating practices and conditions, the signal system, highway-rail grade crossings, and trains on adjacent tracks;

(3) The maximum angle found on the gage face of the designed (newly-profiled) wheel flange referenced with respect to the axis of the wheelset that will be used for the determination of the Single Wheel L/V Ratio safety limit specified in § 213.333;

(4) A target maximum testing speed in accordance with paragraph (a) of this section and the maximum testing cant deficiency;

(5) An analysis and description of the signal system and operating practices to govern operations in track Classes 7 through 9, which shall include a statement of sufficiency in these areas for the class of operation; and

(6) The results of vehicle/track performance simulations that are required by this section.

(f) *Qualification testing.* Upon FRA approval of the qualification testing plan, qualification testing shall be conducted in two sequential stages as required in this subpart.

(1) Stage-one testing shall include demonstration of acceptable vehicle dynamic response of the subject vehicle as speeds are incrementally increased—

(i) On a segment of tangent track, from acceptable track Class 5 speeds to the target maximum test speed (when the target speed corresponds to track Class 6 and above operations); and

(ii) On a segment of curved track, from the speeds corresponding to 3 inches of cant deficiency to the maximum testing cant deficiency.

(2) When stage-one testing has successfully demonstrated a maximum safe operating speed and cant deficiency, stage-two testing shall commence with the subject equipment over a representative segment of the route as identified in paragraph (e)(1) of this section.

(i) A test run shall be conducted over the route segment at the speed the railroad will request FRA to approve for such service.

(ii) An additional test run shall be conducted at 5 m.p.h. above this speed.

(3) When conducting stage-one and stage-two testing, if any of the monitored safety limits is exceeded on any segment of track intended for operation at track Class 6 speeds or greater, or on any segment of track intended for operation at more than 5 inches of cant deficiency, testing may continue provided that the track location(s) where any of the limits is exceeded be identified and test speeds be limited at the track location(s) until corrective action is taken. Corrective action may include making an adjustment in the track, in the vehicle, or both of these system components. Measurements taken on track segments intended for operations below track Class 6 speeds and at 5 inches of cant deficiency, or less, are not required to be reported.

(4) Prior to the start of the qualification testing program, a qualifying TGMS specified in § 213.333 shall be operated over the intended route within 30 calendar days prior to the start of the qualification testing program.

(g) *Qualification testing results.* The track owner or railroad shall submit a report to FRA detailing all the results of the qualification program. When simulations are required as part of vehicle qualification, this report shall include a comparison of simulation predictions to the actual wheel/rail force or acceleration data, or both, recorded during full-scale testing. The report shall be submitted at least 60 days prior to the intended operation of the equipment in revenue service over the route.

(h) Based on the test results and all other required submissions, FRA will approve a maximum train speed and value of cant deficiency for revenue service, normally within 45 days of receipt of all the required information. FRA may impose conditions necessary for safely operating at the maximum approved train speed and cant deficiency.

(i) The documents required by this section must be provided to FRA by:

(1) The track owner; or

(2) A railroad that provides service with the same vehicle type over trackage of one or more track owner(s), with the written consent of each affected track owner.

■ 21. Section 213.355 is revised to read as follows:

§ 213.355 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table—

Class of track	Guard check gage	Guard face gage
	The distance between the gage line of a frog to the guard line [1] of its guard rail or guarding face, measured across the track at right angles to the gage line,[2] may not be less than—	The distance between guard lines,[1] measured across the track at right angles to the gage line,[2] may not be more than—
Class 6, 7, 8 and 9 track	4′6½″	4′5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

[2] A line five-eighths of an inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

■ 22. Appendix A to part 213 is revised to read as follows:

Appendix A to Part 213—Maximum Allowable Curving Speeds

This appendix contains four tables identifying maximum allowing curving speeds based on 3, 4, 5, and 6 inches of unbalance (cant deficiency), respectively.

TABLE 1—THREE INCHES UNBALANCE

	Elevation of outer rail (inches)												
	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Degree of curvature	Maximum allowable operating speed (m.p.h.)												
0°30′	93	100	107	113	120	125	131	136	141	146	151	156	160
0°40′	80	87	93	98	104	109	113	118	122	127	131	135	139
0°50′	72	77	83	88	93	97	101	106	110	113	117	121	124
1°00′	65	71	76	80	85	89	93	96	100	104	107	110	113
1°15′	59	63	68	72	76	79	83	86	89	93	96	99	101
1°30′	53	58	62	65	69	72	76	79	82	85	87	90	93
1°45′	49	53	57	61	64	67	70	73	76	78	81	83	86
2°00′	46	50	53	57	60	63	65	68	71	73	76	78	80
2°15′	44	47	50	53	56	59	62	64	67	69	71	73	76
2°30′	41	45	48	51	53	56	59	61	63	65	68	70	72
2°45′	39	43	46	48	51	53	56	58	60	62	64	66	68
3°00′	38	41	44	46	49	51	53	56	58	60	62	64	65
3°15′	36	39	42	44	47	49	51	53	55	57	59	61	63
3°30′	35	38	40	43	45	47	49	52	53	55	57	59	61
3°45′	34	37	39	41	44	46	48	50	52	53	55	57	59
4°00′	33	35	38	40	42	44	46	48	50	52	53	55	57
4°30′	31	33	36	38	40	42	44	45	47	49	50	52	53
5°00′	29	32	34	36	38	40	41	43	45	46	48	49	51
5°30′	28	30	32	34	36	38	39	41	43	44	46	47	48
6°00′	27	29	31	33	35	36	38	39	41	42	44	45	46
6°30′	26	28	30	31	33	35	36	38	39	41	42	43	44
7°00′	25	27	29	30	32	34	35	36	38	39	40	42	43
8°00′	23	25	27	28	30	31	33	34	35	37	38	39	40
9°00′	22	24	25	27	28	30	31	32	33	35	36	37	38
10°00′	21	22	24	25	27	28	29	30	32	33	34	35	36
11°00′	20	21	23	24	25	27	28	29	30	31	32	33	34
12°00′	19	20	22	23	24	26	27	28	29	30	31	32	33

TABLE 2—FOUR INCHES UNBALANCE

	Elevation of outer rail (inches)												
	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Degree of curvature	Maximum allowable operating speed (m.p.h.)												
0°30′	107	113	120	125	131	136	141	146	151	156	160	165	169
0°40′	93	98	104	109	113	118	122	127	131	135	139	143	146
0°50′	83	88	93	97	101	106	110	113	117	121	124	128	131
1°00′	76	80	85	89	93	96	100	104	107	110	113	116	120
1°15′	68	72	76	79	83	86	89	93	96	99	101	104	107
1°30′	62	65	69	72	76	79	82	85	87	90	93	95	98
1°45′	57	61	64	67	70	73	76	78	81	83	86	88	90
2°00′	53	57	60	63	65	68	71	73	76	78	80	82	85
2°15′	50	53	56	59	62	64	67	69	71	73	76	78	80
2°30′	48	51	53	56	59	61	63	65	68	70	72	74	76
2°45′	46	48	51	53	56	58	60	62	64	66	68	70	72
3°00′	44	46	49	51	53	56	58	60	62	64	65	67	69
3°15′	42	44	47	49	51	53	55	57	59	61	63	65	66
3°30′	40	43	45	47	49	52	53	55	57	59	61	62	64
3°45′	39	41	44	46	48	50	52	53	55	57	59	60	62
4°00′	38	40	42	44	46	48	50	52	53	55	57	58	60
4°30′	36	38	40	42	44	45	47	49	50	52	53	55	56
5°00′	34	36	38	40	41	43	45	46	48	49	51	52	53
5°30′	32	34	36	38	39	41	43	44	46	47	48	50	51
6°00′	31	33	35	36	38	39	41	42	44	45	46	48	49
6°30′	30	31	33	35	36	38	39	41	42	43	44	46	47
7°00′	29	30	32	34	35	36	38	39	40	42	43	44	45
8°00′	27	28	30	31	33	34	35	37	38	39	40	41	42
9°00′	25	27	28	30	31	32	33	35	36	37	38	39	40

TABLE 2—FOUR INCHES UNBALANCE—Continued

	Elevation of outer rail (inches)												
	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Degree of curvature	Maximum allowable operating speed (m.p.h.)												
10°00′	24	25	27	28	29	30	32	33	34	35	36	37	38
11°00′	23	24	25	27	28	29	30	31	32	33	34	35	36
12°00′	22	23	24	26	27	28	29	30	31	32	33	34	35

TABLE 3—FIVE INCHES UNBALANCE

	Elevation of outer rail (inches)												
	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Degree of curvature	Maximum allowable operating speed (m.p.h.)												
0°30′	120	125	131	136	141	146	151	156	160	165	169	173	177
0°40′	104	109	113	118	122	127	131	135	139	143	146	150	150
0°50′	93	97	101	106	110	113	117	121	124	128	131	134	137
1°00′	85	89	93	96	100	104	107	110	113	116	120	122	125
1°15′	76	79	83	86	89	93	96	99	101	104	107	110	112
1°30′	69	72	76	79	82	85	87	90	93	95	98	100	102
1°45′	64	67	70	73	76	78	81	83	86	88	90	93	95
2°00′	60	63	65	68	71	73	76	78	80	82	85	87	89
2°15′	56	59	62	64	67	69	71	73	76	78	80	82	84
2°30′	53	56	59	61	63	65	68	70	72	74	76	77	79
2°45′	51	53	56	58	60	62	64	66	68	70	72	74	76
3°00′	49	51	53	56	58	60	62	64	65	67	69	71	72
3°15′	47	49	51	53	55	57	59	61	63	65	66	68	70
3°30′	45	47	49	52	53	55	57	59	61	62	64	65	67
3°45′	44	46	48	50	52	53	55	57	59	60	62	63	65
4°00′	42	44	46	48	50	52	53	55	57	58	60	61	63
4°30′	40	42	44	45	47	49	50	52	53	55	56	58	59
5°00′	38	40	41	43	45	46	48	49	51	52	53	55	56
5°30′	36	38	39	41	43	44	46	47	48	50	51	52	53
6°00′	35	36	38	39	41	42	44	45	46	48	49	50	51
6°30′	33	35	36	38	39	41	42	43	44	46	47	48	49
7°00′	32	34	35	36	38	39	40	42	43	44	45	46	47
8°00′	30	31	33	34	35	37	38	39	40	41	42	43	44
9°00′	28	30	31	32	33	35	36	37	38	39	40	41	42
10°00′	27	28	29	30	32	33	34	35	36	37	38	39	40
11°00′	25	27	28	29	30	31	32	33	34	35	36	37	38
12°00′	24	26	27	28	29	30	31	32	33	34	35	35	36

TABLE 4—SIX INCHES UNBALANCE

	Elevation of outer rail (inches)												
	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Degree of curvature	Maximum allowable operating speed (m.p.h.)												
0°30′	131	136	141	146	151	156	160	165	169	173	177	181	185
0°40′	113	118	122	127	131	135	139	143	146	150	154	157	160
0°50′	101	106	110	113	117	121	124	128	131	134	137	140	143
1°00′	93	96	100	104	107	110	113	116	120	122	125	128	131
1°15′	83	86	89	93	96	99	101	104	107	110	112	115	117
1°30′	76	79	82	85	87	90	93	95	98	100	102	105	107
1°45′	70	73	76	78	81	83	86	88	90	93	95	97	99
2°00′	65	68	71	73	76	78	80	82	85	87	89	91	93
2°15′	62	64	67	69	71	73	76	78	80	82	84	85	87
2°30′	59	61	63	65	68	70	72	74	76	77	79	81	83
2°45′	56	58	60	62	64	66	68	70	72	74	76	77	79
3°00′	53	56	58	60	62	64	65	67	69	71	72	74	76
3°15′	51	53	55	57	59	61	63	65	66	68	70	71	73
3°30′	49	52	53	55	57	59	61	62	64	65	67	69	70
3°45′	48	50	52	53	55	57	59	60	62	63	65	66	68
4°00′	46	48	50	52	53	55	57	58	60	61	63	64	65

TABLE 4—SIX INCHES UNBALANCE—Continued

	Elevation of outer rail (inches)												
	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Degree of curvature	Maximum allowable operating speed (m.p.h.)												
4°30′	44	45	47	49	50	52	53	55	56	58	59	60	62
5°00′	41	43	45	46	48	49	51	52	53	55	56	57	59
5°30′	39	41	43	44	46	47	48	50	51	52	53	55	56
6°00′	38	39	41	42	44	45	46	48	49	50	51	52	53
6°30′	36	38	39	41	42	43	44	46	47	48	49	50	51
7°00′	35	36	38	39	40	42	43	44	45	46	47	48	49
8°00′	33	34	35	37	38	39	40	41	42	43	44	45	46
9°00′	31	32	33	35	36	37	38	39	40	41	42	43	44
10°00′	29	30	32	33	34	35	36	37	38	39	40	41	41
11°00′	28	29	30	31	32	33	34	35	36	37	38	39	39
12°00′	27	28	29	30	31	32	33	34	35	35	36	37	38

■ 23. Amend appendix B to part 213:

■ a. Under subpart C by removing the entry for § 13.55 and adding entries for §§ 213.55 and 213.65 in numerical order;

■ b. By revising the subpart D heading and under it revising the entries for §§ 213.109 and 213.127, and adding the entry for § 213.110 in numerical order;

■ c. By adding the entry for § 213.234 in numerical order under subpart F;

■ d. By revising the subpart G heading and under it revising the entries for §§ 213.307, 213.327, 213.329, 213.333, and 213.345, and adding the entry for § 213.332 in numerical order.

The revisions and additions read as follows:

Appendix B to Part 213—Schedule of Civil Penalties

Section	Violation	Willful violation [1]
SUBPART C—TRACK GEOMETRY:		
* * * * * * *		
213.55 Track alinement	5,000	7,500
* * * * * * *		
213.65 Combined track alinement and surface deviations	5,000	7,500
SUBPART D—TRACK STRUCTURE:		
* * * * * * *		
213.109 Crossties		
(a) Material used	1,000	2,000
(b) Distribution of ties	2,500	5,000
(c) and (d) Sufficient number of non-defective ties	1,000	2,000
(e) Joint ties	2,500	5,000
(f) Track constructed without crossties	2,500	5,000
213.110 Gage restraint measurement systems	5,000	7,500
* * * * * * *		
213.127 Rail Fastening Systems	2,500	5,000
* * * * * * *		
SUBPART F—INSPECTION:		
* * * * * * *		
213.234 Automated inspection of track constructed with concrete crossties	5,000	7,500
* * * * * * *		
SUBPART G—TRAIN OPERATIONS AT TRACK CLASSES 6 AND HIGHER:		
* * * * * * *		
213.307 Classes of track: operating speed limits	2,500	5,000
* * * * * * *		
213.327 Track alinement	5,000	7,500
213.329 Curves; elevation and speed limits	2,500	5,000
* * * * * * *		
213.332 Combined track alinement and surface deviations	5,000	7,500
213.333 Automated vehicle-based inspection systems	5,000	7,500

Section	Violation	Willful violation [1]
* * * * * *	*	*
213.345 Vehicle/track system qualification:		
(a) through (d)	5,000	7,500
(e) through (i)	2,500	5,000
* * * * * *	*	*

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $105,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

■ 24. Appendix C to part 213 is added and reserved.

■ 25. Appendix D to part 213 is added to read as follows:

Appendix D to Part 213—Minimally Compliant Analytical Track (MCAT) Simulations Used for Qualifying Vehicles To Operate at High Speeds and at High Cant Deficiencies

1. This appendix contains requirements for using computer simulations to comply with the vehicle/track system qualification testing requirements specified in subpart G of this part. These simulations shall be performed using a track model containing defined geometry perturbations at the limits that are permitted for a specific class of track and level of cant deficiency. This track model is known as MCAT, Minimally Compliant Analytical Track. These simulations shall be used to identify vehicle dynamic performance issues prior to service or, as appropriate, a change in service, and demonstrate that a vehicle type is suitable for operation on the track over which it is intended to operate.

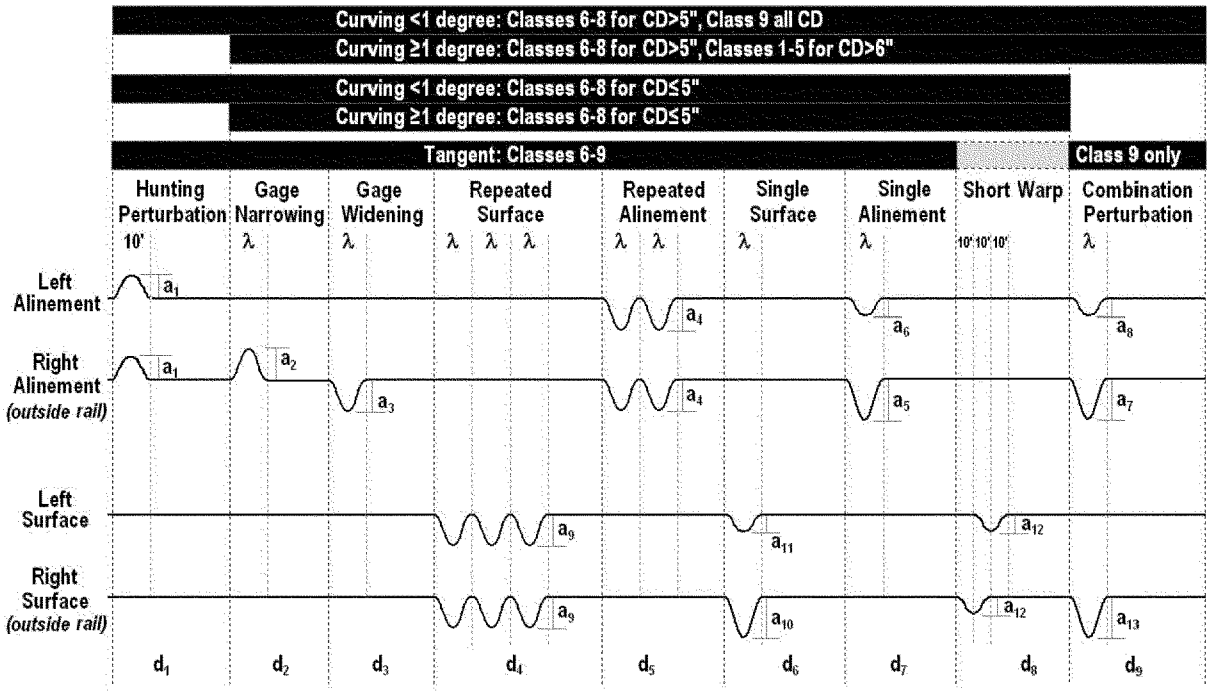
2. As specified in § 213.345(c)(2), MCAT shall be used for the qualification of new vehicle types intended to operate at track Class 7 speeds or above, or at any curving speed producing more than 6 inches of cant deficiency. MCAT may also be used for the qualification of new vehicle types intended to operate at speeds corresponding to Class 6 track, as specified in § 213.345(c)(1). In addition, as specified in § 213.345(d)(1), MCAT may be used to qualify on new routes vehicle types that have previously been qualified on other routes and are intended to operate at any curving speed producing more than 6 inches of cant deficiency, or at curving speeds that both correspond to track Class 7 speeds or above and produce more than 5 inches of cant deficiency.

(a) *Validation.* To validate the vehicle model used for simulations under this part, the track owner or railroad shall obtain vehicle simulation predictions using measured track geometry data, chosen from the same track section over which testing shall be performed as specified in § 213.345(c)(2)(ii). These predictions shall be submitted to FRA in support of the request for approval of the qualification testing plan. Full validation of the vehicle model used for simulations under this part shall be determined when the results of the simulations demonstrate that they replicate all key responses observed during qualification testing.

(b) *MCAT layout.* MCAT consists of nine segments, each designed to test a vehicle's performance in response to a specific type of track perturbation. The basic layout of MCAT is shown in figure 1 of this appendix, by type of track (curving or tangent), class of track, and cant deficiency (CD). The values for wavelength, λ, amplitude of perturbation, a, and segment length, d, are specified in this appendix. The bars at the top of figure 1 show which segments are required depending on the speed and degree of curvature. For example, the hunting perturbation section is not required for simulation of curves greater than or equal to 1 degree.

Figure 1 of Appendix D to Part 213

Basic MCAT Layout



(1) *MCAT segments.* MCAT's nine segments contain different types of track deviations in which the shape of each deviation is a versine having wavelength and amplitude varied for each simulation speed as further specified. The nine MCAT segments are defined as follows:

(i) *Hunting perturbation* (a_1): This segment contains an alinement deviation having a wavelength, λ, of 10 feet and amplitude of 0.25 inch on both rails to test vehicle stability on tangent track and on track that is curved less than 1 degree.

(ii) *Gage narrowing* (a_2): This segment contains an alinement deviation on one rail to reduce the gage from the nominal value to the minimum permissible gage or maximum alinement (whichever comes first).

(iii) *Gage widening* (a_3): This segment contains an alinement deviation on one rail to increase the gage from the nominal value to the maximum permissible gage or maximum alinement (whichever comes first).

(iv) *Repeated surface* (a_9): This segment contains three consecutive maximum permissible profile variations on each rail.

(v) *Repeated alinement* (a_4): This segment contains two consecutive maximum permissible alinement variations on each rail.

(vi) *Single surface* (a_{10}, a_{11}): This segment contains a maximum permissible profile variation on one rail. If the maximum permissible profile variation alone produces a condition which exceeds the maximum allowed warp condition, a second profile variation is also placed on the opposite rail to limit the warp to the maximum permissible value.

(vii) *Single alinement* (a_5, a_6): This segment contains a maximum permissible alinement variation on one rail. If the maximum permissible alinement variation alone produces a condition which exceeds the maximum allowed gage condition, a second alinement variation is also placed on the opposite rail to limit the gage to the maximum permissible value.

(viii) *Short warp* (a_{12}): This segment contains a pair of profile deviations to produce a maximum permissible 10-foot warp perturbation. The first is on the outside rail, and the second follows 10 feet farther on the inside rail. Each deviation has a wavelength, λ, of 20 feet and variable amplitude for each simulation speed as described below. This segment is to be used only on curved track simulations.

(ix) *Combined perturbation* (a_7, a_8, a_{13}): This segment contains a maximum permissible down and out combined geometry condition on the outside rail in the body of the curve. If the maximum permissible variations produce a condition which exceeds the maximum allowed gage condition, a second variation is also placed on the opposite rail as for the MCAT segments described in paragraphs (b)(1)(vi) and (vii) of this appendix. This segment is to be used for all simulations on Class 9 track, and only for curved track simulations at speeds producing more than 5 inches of cant deficiency on track Classes 6 through 8, and at speeds producing more than 6 inches of cant deficiency on track Classes 1 through 5.

(2) *Segment lengths:* Each MCAT segment shall be long enough to allow the vehicle's response to the track deviation(s) to damp out. Each segment shall also have a minimum length as specified in table 1 of this appendix, which references the distances in figure 1 of this appendix. For curved track segments, the perturbations shall be placed far enough in the body of the curve to allow for any spiral effects to damp out.

TABLE 1 OF APPENDIX D TO PART 213 MINIMUM LENGTHS OF MCAT SEGMENTS

Distances (ft)								
d_1	d_2	d_3	d_4	d_5	d_6	d_7	d_8	d_9
1000	1000	1000	1500	1000	1000	1000	1000	1000

(3) *Degree of curvature.*

(i) For each simulation involving assessment of curving performance, the degree of curvature, D, which generates a particular level of cant deficiency, E_u, for a given speed, V, shall be calculated using the following equation, which assumes a curve with 6 inches of superelevation:

$$D = \frac{6 + E_u}{0.0007 \times V^2}$$

Where—

D = Degree of curvature (degrees).
V = Simulation speed (m.p.h.).
E_u = Cant deficiency (inches).

(ii) Table 2 of this appendix depicts the degree of curvature for use in MCAT simulations of both passenger and freight equipment performance on Class 2 through 9 track, based on the equation in paragraph (b)(3)(i) of this appendix. The degree of curvature for use in MCAT simulations of equipment performance on Class 1 track is not depicted; it would be based on the same equation using an appropriate superelevation. The degree of curvature for use in MCAT simulations of freight equipment performance on Class 6 (freight) track is shown in italics for cant deficiencies not exceeding 6 inches, to emphasize that the values apply to freight equipment only.

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Table 2 of Appendix D to Part 213
Degree of Curvature for Use in MCAT Simulations (Track Classes 2 through 9)

		Tangent	Cant Deficiency (inches)								
			3	4	5	6	7	8	9		
Passenger	m.p.h.	Degree of curvature used in simulations								m.p.h.	Freight
Class 2	20						46.4	50.0	53.6	20	Class 2
	25						29.7	32.0	34.3	25	
	30						20.6	22.2	23.8	30	Class 3
Class 3	35						15.2	16.3	17.5	35	
	40						11.6	12.5	13.4	40	
	45						9.17	9.88	10.6	45	Class 4
	50						7.43	8.00	8.57	50	
	55						6.14	6.61	7.08	55	
	60						5.16	5.56	5.95	60	
Class 4	65						4.40	4.73	5.07	65	Class 5
	70						3.79	4.08	4.37	70	
	75						3.30	3.56	3.81	75	
	80						2.90	3.13	3.35	80	
Class 5	85	*0.00*	*1.78*	*1.98*	*2.18*	*2.37*	2.57	2.77	2.97	85	Class 6
	90	*0.00*	*1.59*	*1.76*	*1.94*	*2.12*	2.29	2.47	2.65	90	
Class 6	95	0.00	1.42	1.58	1.74	1.90	2.06	2.22	2.37	95	
	100	0.00	1.29	1.43	1.57	1.71	1.86	2.00	2.14	100	
	105	0.00	1.17	1.30	1.43	1.55	1.68	1.81	1.94	105	
	110	0.00	1.06	1.18	1.30	1.42	1.53	1.65	1.77	110	
Class 7	115	0.00	0.97	1.08	1.19	1.30	1.40	1.51	1.62	115	Class 7
	120	0.00	0.89	0.99	1.09	1.19	1.29	1.39	1.49	120	
	125	0.00	0.82	0.91	1.01	1.10	1.19	1.28	1.37	125	
Class 8	130	0.00	0.76	0.85	0.93	1.01	1.10	1.18	1.27	130	Class 8
	135	0.00	0.71	0.78	0.86	0.94	1.02	1.10	1.18	135	
	140	0.00	0.66	0.73	0.80	0.87	0.95	1.02	1.09	140	
	145	0.00	0.61	0.68	0.75	0.82	0.88	0.95	1.02	145	
	150	0.00	0.57	0.63	0.70	0.76	0.83	0.89	0.95	150	
	155	0.00	0.54	0.59	0.65	0.71	0.77	0.83	0.89	155	
	160	0.00	0.50	0.56	0.61	0.67	0.73	0.78	0.84	160	
Class 9	165	0.00	0.47	0.52	0.58	0.63	0.68	0.73	0.79	165	Class 9
	170	0.00	0.44	0.49	0.54	0.59	0.64	0.69	0.74	170	
	175	0.00	0.42	0.47	0.51	0.56	0.61	0.65	0.70	175	
	180	0.00	0.40	0.44	0.49	0.53	0.57	0.62	0.66	180	
	185	0.00	0.38	0.42	0.46	0.50	0.54	0.58	0.63	185	
	190	0.00	0.36	0.40	0.44	0.47	0.51	0.55	0.59	190	
	195	0.00	0.34	0.38	0.41	0.45	0.49	0.53	0.56	195	
	200	0.00	0.32	0.36	0.39	0.43	0.46	0.50	0.54	200	
	205	0.00	0.31	0.34	0.37	0.41	0.44	0.48	0.51	205	
	210	0.00	0.29	0.32	0.36	0.39	0.42	0.45	0.49	210	
	215	0.00	0.28	0.31	0.34	0.37	0.40	0.43	0.46	215	
	220	0.00	0.27	0.30	0.32	0.35	0.38	0.41	0.44	220	

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(c) *Required simulations.*

(1) To develop a comprehensive assessment of vehicle performance, simulations shall be performed for a variety of scenarios using MCAT. These simulations shall be performed on tangent or curved track, or both, depending on the level of cant deficiency and speed (track class) as summarized in table 3 of this appendix.

TABLE 3 OF APPENDIX D TO PART 213 SUMMARY OF REQUIRED VEHICLE PERFORMANCE ASSESSMENT USING SIMULATIONS

	New vehicle types	Previously qualified vehicle types
Curved track: cant deficiency ≤ 6 inches.	Curving performance simulation: not required for track Classes 1 through 5; optional for track Class 6; required for track Classes 7 through 9.	Curving performance simulation: not required for track Classes 1 through 6; optional for track Classes 7 through 9 for cant deficiency > 5 inches.
Curved track: cant deficiency > 6 inches.	Curving performance simulation required for all track classes.	Curving performance simulation optional for all track classes.
Tangent track	Tangent performance simulation: not required for track Classes 1 through 5; optional for track Class 6; required for track Classes 7 through 9.	Tangent performance simulation not required for any track class.

(i) All simulations shall be performed using the design wheel profile and a nominal track gage of 56.5 inches, using tables 4, 5, 6, or 7 of this appendix, as appropriate. In addition, all simulations involving the assessment of curving performance shall be repeated using a nominal track gage of 57.0 inches, using tables 5, 6, or 7 of this appendix, as appropriate.

(ii) If the wheel profile is different than American Public Transportation Administration (APTA) wheel profiles 320 or 340, then for tangent track segments all simulations shall be repeated using either APTA wheel profile 320 or 340, depending on the established conicity that is common for the operation, as specified in APTA SS–M–015–06, Standard for Wheel Flange Angle of Passenger Equipment (2007). This APTA standard is incorporated by reference into this appendix with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this appendix, FRA must publish notice of change in the **Federal Register** and the material must be made available to the public. All approved material is available for inspection at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6030), and is available from the American Public Transportation Association, 1666 K Street NW., Suite 1100, Washington, DC 20006 (telephone 202–496–4800; *www.apta.com*). It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. An alternative worn wheel profile may be used in lieu of either APTA wheel profile, if approved by FRA.

(iii) All simulations shall be performed using a wheel/rail coefficient of friction of 0.5.

(2) *Vehicle performance on tangent track Classes 6 through 9.* For maximum vehicle speeds corresponding to track Class 6 and higher, the MCAT segments described in paragraphs (b)(1)(i) through (vii) of this appendix shall be used to assess vehicle performance on tangent track. For track Class 9, simulations must also include the combined perturbation segment described in paragraph (b)(1)(ix) of this appendix. A parametric matrix of MCAT simulations shall be performed using the following range of conditions:

(i) *Vehicle speed.* Simulations shall demonstrate that at up to 5 m.p.h. above the proposed maximum operating speed, the vehicle type shall not exceed the wheel/rail force and acceleration criteria defined in the Vehicle/Track Interaction Safety Limits table in § 213.333. Simulations shall also demonstrate acceptable vehicle dynamic response by incrementally increasing speed from 95 m.p.h. (115 m.p.h. if a previously qualified vehicle type on an untested route) to 5 m.p.h. above the proposed maximum operating speed (in 5 m.p.h. increments).

(ii) *Perturbation wavelength.* For each speed, a set of three separate MCAT simulations shall be performed. In each MCAT simulation for the perturbation segments described in paragraphs (b)(1)(ii) through (vii) and (b)(1)(ix) of this appendix, every perturbation shall have the same wavelength. The following three wavelengths, λ, shall be used: 31, 62, and 124 feet. The hunting perturbation segment described in paragraph (b)(1)(i) of this appendix has a fixed wavelength, λ, of 10 feet.

(iii) *Amplitude parameters.* Table 4 of this appendix provides the amplitude values for the MCAT segments described in paragraphs (b)(1)(i) through (vii) and (b)(1)(ix) of this appendix for each speed of the required parametric MCAT simulations. The last set of simulations shall be performed at 5 m.p.h. above the proposed maximum operating speed using the amplitude values in table 4 that correspond to the proposed maximum operating speed. For qualification of vehicle types at speeds greater than track Class 6 speeds, the following additional simulations shall be performed:

(A) For vehicle types being qualified for track Class 7 speeds, one additional set of simulations shall be performed at 115 m.p.h. using the track Class 6 amplitude values in table 4 (i.e., a 5 m.p.h. overspeed on Class 6 track).

(B) For vehicle types being qualified for track Class 8 speeds, two additional sets of simulations shall be performed. The first set at 115 m.p.h. using the track Class 6 amplitude values in table 4 (i.e., a 5 m.p.h. overspeed on Class 6 track), and a second set at 130 m.p.h. using the track Class 7 amplitude values in table 4 (i.e., a 5 m.p.h. overspeed on Class 7 track).

(C) For vehicle types being qualified for track Class 9 speeds, three additional sets of simulations shall be performed. The first set at 115 m.p.h. using the track Class 6 amplitude values in table 4 (i.e., a 5 m.p.h. overspeed on Class 6 track), a second set at 130 m.p.h. using the track Class 7 amplitude values in table 4 (i.e., a 5 m.p.h. overspeed on Class 7 track), and a third set at 165 m.p.h. using the track Class 8 amplitude values in table 4 (i.e., a 5 m.p.h. overspeed on Class 8 track).

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Table 4 of Appendix D to Part 213

Track Class 6 through 9 Amplitude Parameters (in inches) for MCAT Simulations on Tangent Track

		Gage 56.5"			
		Class 6	Class 7	Class 8	Class 9
Max. Operating Speed (m.p.h.)		110	125	160	220
Max. Simulation Speed (m.p.h.)		115	130	165	225
MCAT Segments	**Parameter**	**Segment Description**			
Hunting	a_1	(b)(1)(i)			
Gage Narrowing	a_2	(b)(1)(ii)			
Gage Widening	a_3	(b)(1)(iii)			
Repeated Surface	a_9	(b)(1)(iv)			
Repeated Alinement	a_4	(b)(1)(v)			
Single Surface	a_{10}, a_{11}	(b)(1)(vi)			
Single Alinement	a_5, a_6	(b)(1)(vii)			
Short Warp	a_{12}				
Combined Perturbation	a_7, a_8, a_{13}				(b)(1)(ix)
		Amplitude Parameters (inches)			
Wavelength λ = 10ft	a_1	0.250	0.250	0.250	0.250
Wavelength λ = 20ft	a_{12}				
Wavelength λ = 31ft	a_2	0.500	0.500	0.500	0.250
	a_3	0.750	0.500	0.500	0.500
	a_4	0.375	0.375	0.375	0.375
	a_5	0.500	0.500	0.500	0.500
	a_6	0.000	0.000	0.000	0.000
	a_7				0.333
	a_8				0.000
	a_9	0.750	0.750	0.500	0.375
	a_{10}	1.000	1.000	0.750	0.500
	a_{11}	0.000	0.000	0.000	0.000
	a_{13}				0.333
Wavelength λ = 62ft	a_2	0.500	0.500	0.500	0.250
	a_3	0.750	0.500	0.500	0.500
	a_4	0.500	0.375	0.375	0.375
	a_5	0.750	0.750	0.750	0.500
	a_6	0.000	0.250	0.250	0.000
	a_7				0.333
	a_8				0.000
	a_9	0.750	0.750	0.750	0.500
	a_{10}	1.000	1.000	1.000	0.750
	a_{11}	0.000	0.000	0.000	0.000
	a_{13}				0.500
Wavelength λ = 124ft	a_2	0.500	0.500	0.500	0.250
	a_3	0.750	0.750	0.750	0.750
	a_4	1.000	0.875	0.500	0.500
	a_5	1.500	1.250	1.000	0.750
	a_6	0.750	0.500	0.250	0.000
	a_7				0.500
	a_8				0.000
	a_9	1.250	1.000	0.875	0.625
	a_{10}	1.750	1.500	1.250	1.000
	a_{11}	0.250	0.000	0.000	0.000
	a_{13}				0.667

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(3) *Vehicle performance on curved track Classes 6 through 9.* For maximum vehicle speeds corresponding to track Class 6 and higher, the MCAT segments described in paragraphs (b)(1)(ii) through (viii) of this appendix shall be used to assess vehicle performance on curved track. For curves less than 1 degree, simulations must also include the hunting perturbation segment described in paragraph (b)(1)(i) of this appendix. For track Class 9 and for cant deficiencies greater than 5 inches, simulations must also include the combined perturbation segment described in paragraph (b)(1)(ix) of this appendix. A parametric matrix of MCAT simulations shall be performed using the following range of conditions:

(i) *Vehicle speed.* Simulations shall demonstrate that at up to 5 m.p.h. above the proposed maximum operating speed, the vehicle type shall not exceed the wheel/rail force and acceleration criteria defined in the Vehicle/Track Interaction Safety Limits table in § 213.333. Simulations shall also demonstrate acceptable vehicle dynamic response by incrementally increasing

speed from 95 m.p.h. (115 m.p.h. if a previously qualified vehicle type on an untested route) to 5 m.p.h. above the proposed maximum operating speed (in 5 m.p.h. increments).

(ii) *Perturbation wavelength.* For each speed, a set of three separate MCAT simulations shall be performed. In each MCAT simulation for the perturbation segments described in paragraphs (b)(1)(ii) through (vii) and paragraph (b)(1)(ix) of this appendix, every perturbation shall have the same wavelength. The following three wavelengths, λ, shall be used: 31, 62, and 124 feet. The hunting perturbation segment described in paragraph (b)(1)(i) of this appendix has a fixed wavelength, λ, of 10 feet, and the short warp perturbation segment described in paragraph (b)(1)(viii) of this appendix has a fixed wavelength, λ, of 20 feet.

(iii) *Track curvature.* For each speed, a range of curvatures shall be used to produce cant deficiency conditions ranging from greater than 3 inches up to the maximum intended for qualification (in 1 inch increments). The value of curvature, D, shall be determined using the equation defined in paragraph (b)(3) of this appendix. Each curve shall include representations of the MCAT segments described in paragraphs (b)(1)(i) through (ix) of this appendix, as appropriate, and have a fixed superelevation of 6 inches.

(iv) *Amplitude parameters.* Table 5 of this appendix provides the amplitude values for each speed of the required parametric MCAT simulations for cant deficiencies greater than 3 inches and not more than 5 inches. Table 6 of this appendix provides the amplitude values for each speed of the required parametric MCAT simulations for cant deficiencies greater than 5 inches. The last set of simulations at the maximum cant deficiency shall be performed at 5 m.p.h. above the proposed maximum operating speed using the amplitude values in table 5 or 6 of this appendix, as appropriate, that correspond to the proposed maximum operating speed and cant deficiency. For these simulations, the value of curvature, D, shall correspond to the proposed maximum operating speed and cant deficiency. For qualification of vehicle types at speeds greater than track Class 6 speeds, the following additional simulations shall be performed:

(A) For vehicle types being qualified for track Class 7 speeds, one additional set of simulations shall be performed at 115 m.p.h. using the track Class 6 amplitude values in table 5 or 6 of this appendix, as appropriate (i.e., a 5 m.p.h. overspeed on Class 6 track) and a value of curvature, D, that corresponds to 110 m.p.h. and the proposed maximum cant deficiency.

(B) For vehicle types being qualified for track Class 8 speeds, two additional set of simulations shall be performed. The first set of simulations shall be performed at 115 m.p.h. using the track Class 6 amplitude values in table 5 or 6 of this appendix, as appropriate (i.e., a 5 m.p.h. overspeed on Class 6 track) and a value of curvature, D, that corresponds to 110 m.p.h. and the proposed maximum cant deficiency. The second set of simulations shall be performed at 130 m.p.h. using the track Class 7 amplitude values in table 5 or 6, as appropriate (i.e., a 5 m.p.h. overspeed on Class 7 track) and a value of curvature, D, that corresponds to 125 m.p.h. and the proposed maximum cant deficiency.

(C) For vehicle types being qualified for track Class 9 speeds, three additional sets of simulations shall be performed. The first set of simulations shall be performed at 115 m.p.h. using the track Class 6 amplitude values in table 5 or 6 of this appendix, as appropriate (i.e., a 5 m.p.h. overspeed on Class 6 track) and a value of curvature, D, that corresponds to 110 m.p.h. and the proposed maximum cant deficiency. The second set of simulations shall be performed at 130 m.p.h. using the track Class 7 amplitude values in table 5 or 6, as appropriate (i.e., a 5 m.p.h. overspeed on Class 7 track) and a value of curvature, D, that corresponds to 125 m.p.h. and the proposed maximum cant deficiency. The third set of simulations shall be performed at 165 m.p.h. using the track Class 8 amplitude values in table 5 or 6, as appropriate (i.e., a 5 m.p.h. overspeed on Class 8 track) and a value of curvature, D, that corresponds to 160 m.p.h. and the proposed maximum cant deficiency.

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Table 5 of Appendix D to Part 213

Track Classes 6 through 9 Amplitude Parameters (in inches) for MCAT Simulations on Curved Track with Cant Deficiency > 3 and ≤ 5 Inches

		Gage 56.5"				Gage 57.0"			
		Class 6	Class 7	Class 8	Class 9	Class 6	Class 7	Class 8	Class 9
Max. Operating Speed (m.p.h.)		110	125	160	220	110	125	160	220
Max. Simulation Speed (m.p.h.)		115	130	165	225	115	130	165	225
MCAT Segments	**Parameter**	**Segment Description**				**Segment Description**			
Hunting	a_1	(b)(1)(i) [1]				(b)(1)(i) [1]			
Gage Narrowing	a_2	(b)(1)(ii)				(b)(1)(ii)			
Gage Widening	a_3	(b)(1)(iii)				(b)(1)(iii)			
Repeated Surface	a_9	(b)(1)(iv)				(b)(1)(iv)			
Repeated Alinement	a_4	(b)(1)(v)				(b)(1)(v)			
Single Surface	a_{10}, a_{11}	(b)(1)(vi)				(b)(1)(vi)			
Single Alinement	a_5, a_6	(b)(1)(vii)				(b)(1)(vii)			
Short Warp	a_{12}	(b)(1)(viii)				(b)(1)(viii)			
Combined Perturbation	a_7, a_8, a_{13}				(b)(1)(ix)				(b)(1)(ix)
		Amplitude Parameters (inches)				**Amplitude Parameters (inches)**			
Wavelength λ = 10ft	a_1	0.250[1]	0.250[1]	0.250[1]	0.250[1]	0.250[1]	0.250[1]	0.250[1]	0.250[1]
Wavelength λ = 20ft	a_{12}	0.625	0.563	0.500	0.375	0.625	0.563	0.500	0.375
Wavelength λ = 31ft	a_2	0.500	0.500	0.500	0.250	0.500	0.500	0.500	0.500
	a_3	0.750	0.500	0.500	0.500	0.250	0.250	0.250	0.500
	a_4	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
	a_5	0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500
	a_6	0.000	0.000	0.000	0.000	0.250	0.250	0.250	0.250
	a_7				0.333				0.333
	a_8				0.000				0.083
	a_9	0.750	0.750	0.500	0.375	0.750	0.750	0.500	0.375
	a_{10}	1.000	1.000	0.750	0.500	1.000	1.000	0.750	0.500
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{13}				0.333				0.333
Wavelength λ = 62ft	a_2	0.500	0.500	0.500	0.250	0.500	0.500	0.500	0.500
	a_3	0.750	0.500	0.500	0.500	0.250	0.250	0.250	0.250
	a_4	0.500	0.375	0.375	0.375	0.500	0.375	0.375	0.375
	a_5	0.625	0.500	0.500	0.500	0.625	0.500	0.500	0.500
	a_6	0.000	0.000	0.000	0.000	0.375	0.250	0.250	0.250
	a_7				0.333				0.333
	a_8				0.000				0.083
	a_9	0.750	0.750	0.750	0.500	0.750	0.750	0.750	0.500
	a_{10}	1.000	1.000	1.000	0.750	1.000	1.000	1.000	0.750
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{13}				0.500				0.500
Wavelength λ = 124ft	a_2	0.500	0.500	0.500	0.250	1.000	1.000	1.000	0.750
	a_3	0.750	0.750	0.750	0.750	0.250	0.250	0.250	0.250
	a_4	1.000	0.875	0.500	0.500	1.000	0.875	0.500	0.500
	a_5	1.500	1.250	0.750	0.750	1.500	1.250	0.750	0.750
	a_6	0.750	0.500	0.000	0.000	1.250	1.000	0.500	0.500
	a_7				0.500				0.500
	a_8				0.000				0.250
	a_9	1.250	1.000	0.875	0.625	1.250	1.000	0.875	0.625
	a_{10}	1.750	1.500	1.250	1.000	1.750	1.500	1.250	1.000
	a_{11}	0.250	0.000	0.000	0.000	0.250	0.000	0.000	0.000
	a_{13}				0.667				0.667

[1] For curves <1 degree

Table 6 of Appendix D to Part 213

Track Class 6 through 9 Amplitude Parameters (in inches)

for MCAT Simulations on Curved Track with Cant Deficiency > 5 Inches

		Gage 56.5"				Gage 57.0"			
		Class 6	Class 7	Class 8	Class 9	Class 6	Class 7	Class 8	Class 9
Max. Operating Speed (m.p.h.)		110	125	160	220	110	125	160	220
Max. Simulation Speed (m.p.h.)		115	130	165	225	115	130	165	225
MCAT Segments	**Parameter**	**Segment Description**				**Segment Description**			
Hunting	a_1	(b)(1)(i) [1]				(b)(1)(i) [1]			
Gage Narrowing	a_2	(b)(1)(ii)				(b)(1)(ii)			
Gage Widening	a_3	(b)(1)(iii)				(b)(1)(iii)			
Repeated Surface	a_9	(b)(1)(iv)				(b)(1)(iv)			
Repeated Alinement	a_4	(b)(1)(v)				(b)(1)(v)			
Single Surface	a_{10}, a_{11}	(b)(1)(vi)				(b)(1)(vi)			
Single Alinement	a_5, a_6	(b)(1)(vii)				(b)(1)(vii)			
Short Warp	a_{12}	(b)(1)(viii)				(b)(1)(viii)			
Combined Perturbation	a_7, a_8, a_{13}				(b)(1)(ix)				(b)(1)(ix)
		Amplitude Parameters (inches)				**Amplitude Parameters (inches)**			
Wavelength λ = 10ft	a_1	0.250[1]	0.250[1]	0.250[1]	0.250[1]	0.250[1]	0.250[1]	0.250[1]	0.250[1]
Wavelength λ = 20ft	a_{12}	0.625	0.500	0.500[2]	0.375	0.625	0.500	0.500[2]	0.375
Wavelength λ = 31ft	a_2	0.500	0.500	0.500	0.250	0.500	0.500	0.500	0.500
	a_3	0.750	0.500	0.500	0.500	0.250	0.250	0.250	0.500
	a_4	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
	a_5	0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500
	a_6	0.000	0.000	0.000	0.000	0.250	0.250	0.250	0.250
	a_7	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333
	a_8	0.000	0.000	0.000	0.000	0.083	0.083	0.083	0.083
	a_9	0.750	0.750	0.500	0.375	0.750	0.750	0.500	0.375
	a_{10}	1.000	1.000	0.750	0.500	1.000	1.000	0.750	0.500
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{13}	0.667	0.667	0.500	0.333	0.667	0.667	0.500	0.333
Wavelength λ = 62ft	a_2	0.500	0.500	0.500	0.250	0.500	0.500	0.500	0.500
	a_3	0.750	0.500	0.500	0.500	0.250	0.250	0.250	0.250
	a_4	0.500	0.375	0.375	0.375	0.500	0.375	0.375	0.375
	a_5	0.625	0.500	0.500	0.500	0.625	0.500	0.500	0.500
	a_6	0.000	0.000	0.000	0.000	0.375	0.250	0.250	0.250
	a_7	0.417	0.333	0.333	0.333	0.417	0.333	0.333	0.333
	a_8	0.000	0.000	0.000	0.000	0.167	0.083	0.083	0.083
	a_9	0.750	0.750	0.750	0.500	0.750	0.750	0.750	0.500
	a_{10}	1.000	1.000	1.000	0.750	1.000	1.000	1.000	0.750
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{13}	0.667	0.667	0.667	0.500	0.667	0.667	0.667	0.500
Wavelength λ = 124ft	a_2	0.500	0.500	0.500	0.250	1.000	1.000	1.000	0.750
	a_3	0.750	0.750	0.750	0.750	0.250	0.250	0.250	0.250
	a_4	1.000	0.875	0.500	0.500	1.000	0.875	0.500	0.500
	a_5	1.250	1.000	0.750	0.750	1.250	1.000	0.750	0.750
	a_6	0.500	0.250	0.000	0.000	1.000	0.750	0.500	0.500
	a_7	0.833	0.667	0.500	0.500	0.833	0.667	0.500	0.500
	a_8	0.083	0.000	0.000	0.000	0.583	0.417	0.250	0.250
	a_9	1.250	1.000	0.875	0.625	1.250	1.000	0.875	0.625
	a_{10}	1.500	1.250	1.250	1.000	1.500	1.250	1.250	1.000
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{13}	1.000	0.833	0.833	0.667	1.000	0.833	0.833	0.667

[1] For curves <1 degree [2] 0.375 for E_u>7"

(4) *Vehicle performance on curved track Classes 1 through 5 at high cant deficiency.* For maximum vehicle speeds corresponding to track Classes 1 through 5, the MCAT segments described in paragraphs (b)(1)(ii) through (ix) of this appendix shall be used to assess vehicle performance on curved track if the proposed maximum cant deficiency is greater than 6 inches. A parametric matrix of MCAT simulations shall be performed using the following range of conditions:

(i) *Vehicle speed.* Simulations shall demonstrate that at up to 5 m.p.h. above the proposed maximum operating speed, the vehicle shall not exceed the wheel/rail force and acceleration criteria defined in the Vehicle/Track Interaction Safety Limits table in § 213.333. Simulations shall also demonstrate acceptable vehicle dynamic response at 5 m.p.h. above the proposed maximum operating speed.

(ii) *Perturbation wavelength.* For each speed, a set of two separate MCAT simulations shall be performed. In each MCAT simulation for the perturbation segments described in paragraphs (b)(1)(ii) through (vii) and paragraph (b)(1)(ix) of this appendix, every perturbation shall have the same wavelength. The following two wavelengths, λ, shall be used: 31 and 62 feet. The short warp perturbation segment described in paragraph (b)(1)(viii) of this appendix has a fixed wavelength, λ, of 20 feet.

(iii) *Track curvature.* For a speed corresponding to 5 m.p.h. above the proposed maximum operating speed, a range of curvatures shall be used to produce cant deficiency conditions ranging from 6 inches up to the maximum intended for qualification (in 1 inch increments). The value of curvature, D, shall be determined using the equation in paragraph (b)(3) of this appendix. Each curve shall contain the MCAT segments described in paragraphs (b)(1)(ii) through (ix) of this appendix and have a fixed superelevation of 6 inches.

(iv) *Amplitude parameters.* Table 7 of this appendix provides the amplitude values for the MCAT segments described in paragraphs (b)(1)(ii) through (ix) of this appendix for each speed of the required parametric MCAT simulations.

Table 7 of Appendix D to Part 213

Track Class 1 through 5 Amplitude Parameters (in inches)

for MCAT Simulations on Curved Track with Cant Deficiency > 6 Inches

		Gage 56.5"					Gage 57.0"				
		Class 1	Class 2	Class 3	Class 4	Class 5	Class 1	Class 2	Class 3	Class 4	Class 5
Max. Operating Speed (m.p.h.)		15	30	60	80	90	15	30	60	80	90
Max. Simulation Speed (m.p.h.)		20	35	65	85	95	20	35	65	85	95
MCAT Segments	**Parameter**	**Segment Description**					**Segment Description**				
Hunting	a_1										
Gage Narrowing	a_2	(b)(1)(ii)					(b)(1)(ii)				
Gage Widening	a_3	(b)(1)(iii)					(b)(1)(iii)				
Repeated Surface	a_9	(b)(1)(iv)					(b)(1)(iv)				
Repeated Alinement	a_4	(b)(1)(v)					(b)(1)(v)				
Single Surface	a_{10}, a_{11}	(b)(1)(vi)					(b)(1)(vi)				
Single Alinement	a_5, a_6	(b)(1)(vii)					(b)(1)(vii)				
Short Warp	a_{12}	(b)(1)(viii)					(b)(1)(viii)				
Combined Perturbation	a_7, a_8, a_{13}	(b)(1)(ix)					(b)(1)(ix)				
		Amplitude Parameters (inches)					**Amplitude Parameters (inches)**				
Wavelength λ = 10ft	a_1										
Wavelength λ = 20ft	a_{12}	1.000	1.000	0.875	0.875	0.750	1.000	1.000	0.875	0.875	0.750
Wavelength λ = 31ft	a_2	0.500	0.500	0.500	0.500	0.500	1.250	1.250	1.250	0.500	0.500
	a_3	1.250	1.250	1.250	0.500	0.500	0.750	0.750	0.750	0.500	0.500
	a_4	0.750	0.750	0.750	0.750	0.500	0.750	0.750	0.750	0.750	0.500
	a_5	0.750	0.750	0.750	0.750	0.500	0.750	0.750	0.750	0.750	0.500
	a_6	0.000	0.000	0.000	0.250	0.000	0.000	0.000	0.000	0.250	0.000
	a_7	0.500	0.500	0.500	0.500	0.333	0.500	0.500	0.500	0.500	0.333
	a_8	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_9	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	a_{10}	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{13}	0.667	0.667	0.667	0.667	0.667	0.667	0.667	0.667	0.667	0.667
Wavelength λ = 62ft	a_2	0.500	0.500	0.500	0.500	0.500	1.250	1.250	1.250	0.500	0.500
	a_3	1.250	1.250	1.250	0.500	0.500	0.750	0.750	0.750	0.500	0.500
	a_4	1.250	1.250	1.250	0.875	0.625	1.250	1.250	1.250	0.875	0.625
	a_5	1.250	1.250	1.250	0.875	0.625	1.250	1.250	1.250	0.875	0.625
	a_6	0.000	0.000	0.000	0.375	0.125	0.500	0.500	0.500	0.375	0.125
	a_7	0.833	0.833	0.833	0.583	0.417	0.833	0.833	0.833	0.583	0.417
	a_8	0.000	0.000	0.000	0.083	0.000	0.083	0.083	0.083	0.083	0.000
	a_9	1.750	1.750	1.750	1.250	1.000	1.750	1.750	1.750	1.250	1.000
	a_{10}	1.750	1.750	1.750	1.250	1.000	1.750	1.750	1.750	1.250	1.000
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{13}	1.167	1.167	1.167	0.833	0.667	1.167	1.167	1.167	0.833	0.667

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PART 238—[AMENDED]

■ 26. The authority citation for part 238 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart C—Specific Requirements for Tier I Passenger Equipment

■ 27. Section 238.227 is revised to read as follows:

§ 238.227 Suspension system.

On or after November 8, 1999—

(a) All passenger equipment shall exhibit freedom from truck hunting at all operating speeds. If truck hunting does occur, a railroad shall immediately take appropriate action to prevent

derailment. Truck hunting is defined in § 213.333 of this chapter.

(b) Nothing in this section shall affect the requirements of the Track Safety Standards in part 213 of this chapter as they apply to passenger equipment as provided in that part. In particular—

(1) *Pre-revenue service qualification.* All passenger equipment intended for service at speeds greater than 90 mph or at any curving speed producing more than 5 inches of cant deficiency shall demonstrate safe operation during pre-revenue service qualification in accordance with § 213.345 of this chapter and is subject to the requirements of either § 213.57 or § 213.329 of this chapter, as appropriate.

(2) *Revenue service operation.* All passenger equipment intended for service at speeds greater than 90 mph or at any curving speed producing more than 5 inches of cant deficiency is subject to the requirements of § 213.333 of this chapter and either § 213.57 or § 213.329 of this chapter, as appropriate.

Subpart E—Specific Requirements for Tier II Passenger Equipment

■ 28. Section 238.427 is amended by revising paragraphs (a)(2), (b), and (c), and by removing paragraph (d) to read as follows:

§ 238.427 Suspension system.

(a) * * *

(2) All passenger equipment shall meet the safety performance standards for suspension systems contained in part 213 of this chapter, or alternative standards providing at least equivalent safety if approved by FRA under the provisions of § 238.21. In particular—

(i) *Pre-revenue service qualification.* All passenger equipment shall demonstrate safe operation during pre-revenue service qualification in accordance with § 213.345 of this chapter and is subject to the requirements of § 213.329 of this chapter.

(ii) *Revenue service operation.* All passenger equipment in service is subject to the requirements of §§ 213.329 and 213.333 of this chapter.

(b) *Carbody acceleration.* A passenger car shall not operate under conditions that result in a steady-state lateral acceleration greater than 0.15g, as measured parallel to the car floor inside the passenger compartment. Additional carbody acceleration limits are specified in § 213.333 of this chapter.

(c) *Truck (hunting) acceleration.* Each truck shall be equipped with a permanently installed lateral accelerometer mounted on the truck frame. If truck hunting is detected, the train monitoring system shall provide an alarm to the locomotive engineer, and the train shall be slowed to a speed at least 5 mph less than the speed at which the truck hunting stopped. Truck hunting is defined in § 213.333 of this chapter.

■ 29. Section 238.428 is added to read as follows:

§ 238.428 Overheat sensors.

Overheat sensors for each wheelset journal bearing shall be provided. The sensors may be placed either onboard the equipment or at reasonable intervals along the railroad's right-of-way.

■ 30. Appendix A to part 238 is amended by adding the entry for new § 238.428 in numerical order to read as follows:

Appendix A to Part 238—Schedule of Civil Penalties [1] [2]

Section		Violation	Willful violation
SUBPART E—SPECIFIC REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT:			
*	*	*	*
238.428	Overheat sensors	2,500	5,000
*	*	*	*

Appendix C to Part 238 [Removed and Reserved]

■ 31. Appendix C to part 238 is removed and reserved.

Issued in Washington, DC, on February 25, 2013.

Joseph C. Szabo,

Administrator.

[FR Doc. 2013–04679 Filed 3–12–13; 8:45 am]

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[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 $16,000 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 $105,000 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.

[2] The penalty schedule uses section numbers from 49 CFR part 238. If more than one item is listed as a type of violation of a given section, each item is also designated by a ''penalty code,'' which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

FEDERAL REGISTER

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Part III

The President

Executive Order 13637—Administration of Reformed Export Controls

Federal Register
Vol. 78, No. 49
Wednesday, March 13, 2013

Presidential Documents

Title 3—

The President

Executive Order 13637 of March 8, 2013

Administration of Reformed Export Controls

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*) (the ''Act''), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Delegation of Functions.* The following functions conferred upon the President by the Act, and related laws, are delegated as follows:

(a) Those under section 3 of the Act (22 U.S.C. 2753), with the exception of subsections (a)(1), (b), (c)(3), (c)(4), and (f) (22 U.S.C. 2753(a)(1), (b), (c)(3), (c)(4), and (f)), to the Secretary of State. The Secretary of State, in the implementation of the delegated functions under sections 3(a) and (d) of the Act (22 U.S.C. 2753(a) and (d)), is authorized to find, in the case of a proposed transfer of a defense article or related training or other defense service by a foreign country or international organization not otherwise eligible under section 3(a)(1) of the Act (22 U.S.C. 2753(a)(1)), whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under section 5 (22 U.S.C. 2755) to the Secretary of State.

(c) Those under section 21 of the Act (22 U.S.C. 2761), with the exception of the last sentence of subsection (d) and all of subsection (i) (22 U.S.C. 2761(d) and (i)), to the Secretary of Defense.

(d) Those under sections 22(a), 29, 30, and 30A of the Act (22 U.S.C. 2762(a), 2769, 2770, and 2770a) to the Secretary of Defense.

(e) Those under section 23 of the Act (22 U.S.C. 2763), and under section 7069 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Public Law 112–74, Division I) and any subsequently enacted provision of law that is the same or substantially the same, to the Secretary of Defense to be exercised in consultation with the Secretary of State and, other than the last sentence of section 23(a) (22 U.S.C. 2763(a)), in consultation with the Secretary of the Treasury, except that the President shall determine any rate of interest to be charged that is less than the market rate of interest.

(f) Those under sections 24 and 27 of the Act (22 U.S.C. 2764 and 2767) to the Secretary of Defense. The Secretary of Defense shall consult with the Secretary of State and the Secretary of the Treasury in implementing the delegated functions under section 24 (22 U.S.C. 2764) and with the Secretary of State in implementing the delegated functions under section 27 (22 U.S.C. 2767).

(g) Those under section 25 of the Act (22 U.S.C. 2765) to the Secretary of State. The Secretary of Defense shall assist the Secretary of State in the preparation of materials for presentation to the Congress under that section.

(h) Those under section 34 of the Act (22 U.S.C. 2774) to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security or financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under section 35(a) of the Act (22 U.S.C. 2775(a)) to the Secretary of State.

(j) Those under sections 36(a) and 36(b)(1) of the Act (22 U.S.C. 2776(a) and (b)(1)), except with respect to the certification of an emergency as provided by subsection (b)(1) (22 U.S.C. 2776(b)(1)), to the Secretary of Defense. The Secretary of Defense, in the implementation of the delegated functions under sections 36(a) and (b)(1) (22 U.S.C. 2776(a) and (b)(1)), shall consult with the Secretary of State. With respect to those functions under sections 36(a)(5) and (6) (22 U.S.C. 2776(a)(5) and (6)), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

(k) Those under section 36(b)(1) with respect to the certification of an emergency as provided by subsection (b)(1) and under sections 36(c) and (d) of the Act (22 U.S.C. 2776(b)(1), (c), and (d)) to the Secretary of State.

(l) Those under section 36(f)(1) of the Act (22 U.S.C. 2776(f)(1)) to the Secretary of Defense.

(m) Those under sections 36(f)(2) and (f)(3) of the Act (22 U.S.C. 2776(f)(2) and (f)(3)) to the Secretary of State.

(n) Those under section 38 of the Act (22 U.S.C. 2778) to:

(i) the Secretary of State, except as otherwise provided in this subsection. Designations, including changes in designations, by the Secretary of State of items or categories of items that shall be considered as defense articles and defense services subject to export control under section 38 (22 U.S.C. 2778) shall have the concurrence of the Secretary of Defense. The authority to undertake activities to ensure compliance with established export conditions may be redelegated to the Secretary of Defense, or to the head of another executive department or agency as appropriate, who shall exercise such functions in consultation with the Secretary of State;

(ii) the Attorney General, to the extent they relate to the control of the permanent import of defense articles and defense services. In carrying out such functions, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations, including changes in designations, by the Attorney General of items or categories of items that shall be considered as defense articles and defense services subject to permanent import control under section 38 of the Act (22 U.S.C. 2778) shall be made with the concurrence of the Secretary of State and the Secretary of Defense and with notice to the Secretary of Commerce; and

(iii) the Department of State for the registration and licensing of those persons who engage in the business of brokering activities with respect to defense articles or defense services controlled either for purposes of export by the Department of State or for purposes of permanent import by the Department of Justice.

(o) Those under section 39(b) of the Act (22 U.S.C. 2779(b)) to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under section 22 of the Act (22 U.S.C. 2762).

(p) Those under the portion of section 40A of the Act added by Public Law 104–164 (22 U.S.C. 2785), to the Secretary of State insofar as they relate to commercial exports licensed under the Act, and to the Secretary of Defense insofar as they relate to defense articles and defense services sold, leased, or transferred under the Foreign Military Sales Program.

(q) Those under the portion of section 40A of the Act added by the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) (22 U.S.C. 2781), to the Secretary of State.

(r) Those under sections 42(c) and (f) of the Act (22 U.S.C. 2791(c) and (f)) to the Secretary of Defense. The Secretary of Defense shall obtain the concurrence of the Secretary of State and the Secretary of Commerce on any determination considered under the authority of section 42(c) of the Act (22 U.S.C. 2791(c)).

(s) Those under section 52(b) of the Act (22 U.S.C. 2795a(b)) to the Secretary of Defense.

(t) Those under sections 61 and 62(a) of the Act (22 U.S.C. 2796 and 2796a(a)) to the Secretary of Defense.

(u) Those under section 2(b)(6) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(6)) to the Secretary of State.

Sec. 2. *Coordination.* (a) In addition to the specific provisions of section 1 of this order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them under this order, shall consult with each other and with the heads of other executive departments and agencies on matters pertaining to their responsibilities.

(b) Under the direction of the President and in accordance with section 2(b) of the Act (22 U.S.C. 2752(b)), the Secretary of State, taking into account other United States activities abroad, shall be responsible for the continuous supervision and general direction of sales and exports under the Act, including the negotiation, conclusion, and termination of international agreements, and determining whether there shall be a sale to a country and the amount thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.

Sec. 3. *Allocation of Funds.* Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

Sec. 4. *Revocation.* Executive Order 11958 of January 18, 1977, as amended, is revoked; except that, to the extent consistent with this order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, taken, or entered into under the provisions of Executive Order 11958, as amended, and not revoked, superseded, or otherwise made inapplicable, shall continue in full force and effect until amended, modified, or terminated by appropriate authority.

Sec. 5. *Delegation of Functions under the International Emergency Economic Powers Act.* Executive Order 13222 of August 17, 2001, is amended as follows:

(a) Redesignate section 4 as section 6.

(b) Insert the following new sections 4 and 5 after section 3: ''**Sec. 4**. The Secretary of Commerce shall, to the extent required as a matter of statute or regulation, establish appropriate procedures for when Congress is to be notified of the export of firearms that are subject to the jurisdiction of the Department of Commerce under the Export Administration Regulations and that are controlled for purposes of permanent import by the Attorney General under section 38(a) of the Arms Export Control Act (22 U.S.C. 2778(a)) and appropriate procedures for when Congress is to be notified of the export of Major Defense Equipment controlled for purposes of permanent export under the jurisdiction of the Department of Commerce.

Sec. 5. (a) The Secretary of State is hereby authorized to take such actions and to employ those powers granted to the President by the Act as may be necessary to license or otherwise approve the export, reexport, or transfer of items subject to the jurisdiction of the Department of Commerce as agreed to by the Secretary of State and the Secretary of Commerce.

(b) Notwithstanding subsection (a) of this section, items licensed or otherwise approved by the Secretary of State pursuant to this section remain subject to the jurisdiction of the Department of Commerce.''

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
Washington, March 8, 2013.

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